C/P&PS

11 JUL 1978

MEMORANDUM FOR: Chief, Logistics and Procurement Law Division, OGC

25X1A ATTENTION: [redacted]

VIA: Director of Logistics
Chief, Plans and Programs Staff, OL

25X1A FROM: [redacted]
Deputy Chief, Real Estate and Construction Division, OL

SUBJECT: Comments on Proposed National Environmental Policy Act (NEPA) Regulations (U)

REFERENCES:

25X1A (a) Memo dtd 13 Jun 78 to C/RECD/OL fm [redacted] L&PLD/OGC, same subject

(b) Memo to NEPA Contacts dtd 7 Jun 78 fm Nicholas C. Yost, General Counsel, Council on Environmental Quality, EOP, subject: Publication of Proposed NEPA Regulations for Comment (OL 8 2607)

(c) LI 45-16 dtd 22 Jan 74, subject: National Environmental Policy Act Implementing Procedures (published in Federal Register, Vol. 39, No. 19, Monday, 28 January 1974)

1. (U) As you requested in reference (a), this memorandum provides Office of Logistics' comments on the proposed NEPA Regulations dated 31 May 1978 (attached). Paragraph 2 of this memorandum describes those areas in the regulations which would have an impact on this Agency. Paragraphs 3 and 4 discuss several of those areas which have major policy implications for the Agency and make specific recommendations to implement these regulations should they be promulgated.

2. (C) Referring to the attached NEPA proposed regulations and the supplementary information provided by Mr. Warren, Chairmen, Council on Environmental Quality (CEQ), we comment as follows:

OL 8 3254

25X1A [redacted]

SUBJECT: Comments on Proposed National Environmental Policy Act (NEPA) Regulations (U)

a. In paragraph 2 (A)(i) of the supplementary information, Mr. Warren comments that agencies are directed to write concise Environmental Impact Statements (EIS's) which shall not normally be less than 150 pages or, for proposals of unusual scope and complexity, 300 pages. I cannot help but believe that, rather than "less than," he means "not more than." I'm afraid that this "Freudian slip" is indicative of what follows.

b. In paragraph 4 of the supplementary information, Mr. Warren makes it clear that these regulations do not apply outside of the United States and that the entire issue of such application is still under discussion. As STAT of your office is well aware from meetings in which he participated with members of the CEQ, it has been Agency policy that we will follow whatever procdeures apply to the STAT organizations through which we work. I think we should go further than this and clearly state that while we must, of necessity, act in this manner, it is the Agency's position that such regulations should not apply outside of the United States.

c. Section 1501.7, Scoping, requires that a decision to prepare an environmental impact statement must be published in the Federal Register.

d. Section 1502.4, Major Federal Actions Requiring the Preparation of Environmental Impact Statements, and Section 1508.17, Major Federal Action, both clearly indicate that not only activities such as construction require the preparation of assessments and environmental impact statements but also Agency programs, regulations, or legislation which could have an impact on the environment or a significant effect on public health or safety. This is emphasized in Section 1508.25, Significantly, which also clarifies the definitions of actions to be included under the NEPA process. Clearly, the process applies to major operational programs which have, in the past, been undertaken by the Directorate of Science and Technology and by the Office of Technical Services as well as to the obvious construction of facilities or their maintenance and operation.

e. Section 1502.19, Circulation of Environmental Impact Statement, requires that such statements be distributed in both the Federal and public domains.

SUBJECT: Comments on Proposed National Environmental Policy Act (NEPA) Regulations (U)

f. Section 1505.1, Agency Decisionmaking Procedures, requires that agencies adopt procedures to ensure that decisions are made in accordance with NEPA. Since these procedures would have application not only within the Office of Logistics but Agency-wide when applied to programs and legislation, these procedures would have to be promulagted as a Headquarters Regulation rather than a Logistics Instruction, as presently the case.

g. Section 1505.2, Record of Decision in Those Cases Requiring Environmental Impact Statements, would require that each agency publish a public record of its decision on EIS's.

h. Section 1506.6, Public Involvement, specifies in some detail the extent to which agencies shall ensure that the public is involved in the NEPA process.

i. Section 1506.9, Filing Requirements, requires that EIS's be filed with EPA and CEQ.

j. Section 1507.3, Agency Procedures, requires that within 8 months of publication of the regulations each agency shall develop and publish in the Federal Register their own implementing procedures. Most important of all, subparagraph c of this section provides that agencies may include, in their procedures, criteria for providing exceptions for actions that need to be kept secret in the interest of national defense or foreign policy and are properly classified pursuant to Executive order or statute.

3. (C) Notwithstanding the time and effort which will be required in implementing these procedures within the Agency, we can do so for unclassified projects and programs. The biggest problem is how we treat classified projects or programs and how we treat projects or programs which in themselves are not classified but for which the Agency's relationship with that project or program is classified. There is also a question in my mind as to what responsibility the Agency has for proprietary projects or other covert activities of the Agency:

a. Regarding classified projects, Section 1507.3, Agency Procedures, does permit that our procedures include criteria for the handling of classified projects.

SUBJECT: Comments on Proposed National Environmental Policy Act (NEPA) Regulations (U)

It will be necessary, of course, for our procedures in this area to be published in the Federal Register, but at least it provides us with the mechanism for handling projects or programs which are in themselves classified. This specific section does not make it clear what, if any, reporting to CEQ would be required, and I assume that this was intentionally left nebulous.

25X1

[redacted]

SUBJECT: Comments on Proposed National Environmental Policy Act (NEPA) Regulations (U)

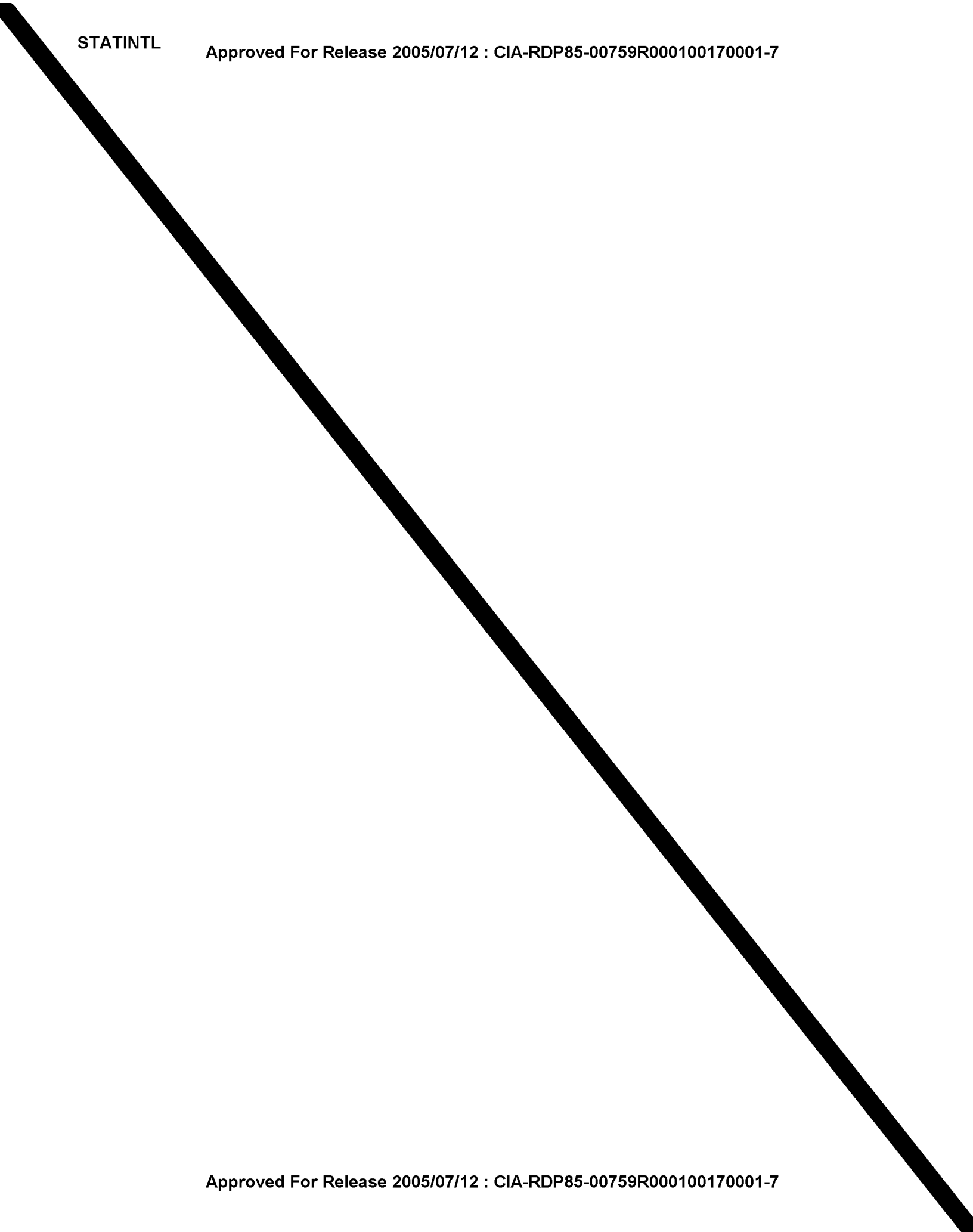
NEPA implementing procedures are issued as a Headquarters Regulation rather than a Logistics Instruction, then it is incumbent on all Agency managers, including those responsible for such programs, to ensure that they are observed.

4. (U) In summary, there is no question that the procedures, as proposed, will create a tremendous workload for not only this office but other offices of the Agency if literally and conscientiously applied. Nothwithstanding that fact, I believe we can, as with Freedom of Information and the Privacy Act, live with it and abide by it if we must. However, I think in your comments to Mr. Yost it is absolutely essential that you emphasize the importance of Section 1507.3(c) regarding procedures for the handling of classified projects. If the NEPA procedures, as presently written, are adapted, then the next major hurdles for us will be the development of those classified procedures, their acceptance (following public review) by CEQ, and their inclusion in the Headquarters Regulations.

[redacted] 25X1A

Atts

cc: D/L, w/o atts.
C/P&PS/OL, w/atts.



Approved For Release 2005/07/12 : CIA-RDP85-00759R000100170001-7

Approved For Release 2005/07/12 : CIA-RDP85-00759R000100170001-7

ROUTING AND RECORD SHEET

SUBJECT: (Optional) Comments on Proposed NEPA Regulations

25X1 FROM: [redacted]

EXTENSION 8118

NO.

DATE 13 June 1978

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
25X1 1 [redacted]				
2.				
3.				
4.				
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10.				
11.				
12.				
13.				
14.				
15.				

13 June 1978

MEMORANDUM FOR: Real Estate & Construction Division
Office of Logistics

STATINTL ATTENTION: [redacted]

FROM: [redacted] STATINTL
Logistics & Procurement Law Division
Office of General Counsel

SUBJECT: Comments on Proposed NEPA Regulations

1. We have reviewed your draft letter commenting on proposed NEPA regulations. As you are well aware, the impact of the proposed NEPA regulations are immense and would impact on not one, but several areas of Agency concern. The Agency is not alone in this position. Consequently, several Government-wide meetings have either occurred, or are planned, to discuss a unified response to the Counsel on Environmental Quality (CEQ). (See attached memorandum from the White House.) It appears to be in the Agency's best interest to present CEQ a unified Agency position instead of what may develop into several differing, and possibly contradictory, views presented by separate Agency elements. Therefore, we request that any such response to CEQ be coordinated by this Office with the total Agency response which will be presented for White House review in the near future.

2. We will keep you informed of the status of this matter and seek your views for our final presentation for White House review.

STATINTL

3. Your papers are returned herewith.

[redacted]

Att.

cc: D/L, w/att

OGC 78-3712
6-8-78

THE WHITE HOUSE

WASHINGTON

78-165 LWB
6/17/78 JCL
MFJ

June 7, 1978

MEMORANDUM FOR: Distribution List Attached

FROM: MARGARET McKENNA

SUBJECT: Application of NEPA to Federal Government Activities Overseas

As discussed at our meeting on May 18, below is an outline of the schedule we will be following:

1. Our office has requested a formal legal opinion on the NEPA issue from the Office of Legal Counsel at Justice. Attached.

2. Our office will draft an options paper to present to the President.

3. The State Department and CEQ will work on regulations for the extra-territorial application of NEPA to State by June 15. If they reach an agreement, their regulations can be used as a model for other agencies.

THE WHITE HOUSE

WASHINGTON

June 7, 1978

MEMORANDUM FOR: JOHN HARMON

FROM: MARGARET McKENNA

SUBJECT: Extra-territorial Application of NEPA

As you know, there has been a great deal of concern and discussion on the issue of the extra-territorial application of NEPA. We are requesting from the Office of Legal Counsel an opinion discussing the issue of whether NEPA applies to Federal government activities overseas, and if it does apply, the extent of its application. Your analysis should detail what flexibility the President has in making decisions in the matter and should address both the procedural and substantive aspects of the issue. It should also contain an interpretation of the statute, including the legislative history, and a discussion of any court decisions which address or discuss the extra-territorial application of NEPA.

We would also like you to analyze the possible effect on legal action that might result if the President were to (1) direct the agencies to write their own regulations, or (2) direct the agencies to write their own regulations in consultation with CEQ and subject to the approval of CEQ.

The analysis should fully discuss the arguments on both sides of the issue and your opinion as to the strengths and weaknesses of these arguments.

Several agencies have already done extensive research on this matter. By copy of this memorandum, I am asking that they cooperate with you by providing to the Department of Justice any legal research or memoranda concerning this issue.

Please provide this office with your analysis by June 30.

Distribution List

Memorandum Re: Application of NEPA to Federal Government Activities Overseas

June 7, 1978

Joan Bernstein
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Department of Energy

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Domestic Policy Staff

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CEQ

REFERENCE

b

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AEO/OL MW 12 JUN

OL/RECD

Comments due Aug 4, 1978

FORM NO. 1 MAY 56 238 REPLACES FORM 35-1 WHICH IS OBSOLETE

DOCUMENT CONTROL (13-40) MFG 1-77

SEC. CL.	ORIGIN	CONTROL NO.
UNCL	Council on Environmental EX. OFFICE OF PRES/	OL 8 2607

DATE OF DOC	DATE REC'D	DATE OUT	SUSPENSE DATE	CROSS REFERENCE OR POINT OF FILING
7June	12 June		8-4-78	

TO NEPA Contacts
FROM Council on Environmental Quality
SUBJ. Publication of Proposed NEPA Regulations for Comment

ROUTING	DATE SENT
AEO/OL	12 June
OL/RECD	6-13

COURIER NO.	ANSWERED	NO REPLY

1

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

June 7, 1978

MEMORANDUM

TO: NEPA Contacts

SUBJECT: Publication of Proposed NEPA Regulations for Comment

As noted in our May 10, 1978 memorandum to you, the Council has now placed the proposed NEPA regulations in the Federal Register for public comment. Consistent with our responsiveness to the views of over forty agencies, we hope that we have addressed your concerns. However, we hope you will feel free to contact us, either through formal comments or informal meetings.

We have simultaneously forwarded copies to Heads of Agencies, along with our special environmental assessment of the regulations.

Thank you for your past assistance and we look forward to your further cooperation.

NICHOLAS C. YOST
General Council

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

May 31, 1978

COUNCIL ON ENVIRONMENTAL QUALITY
TITLE 40 - PROTECTION OF THE ENVIRONMENT
CHAPTER V - COUNCIL ON ENVIRONMENTAL QUALITY
PARTS 1500-1508 -- IMPLEMENTATION OF THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT - REGULATIONS

AGENCY: Council on Environmental Quality, Executive Office of the President

ACTION: Proposed Regulations

SUMMARY: These proposed regulations implementing procedural provisions of the National Environmental Policy Act are submitted for public comment. Comments must be received by August 11, 1978. They should be addressed to: Nicholas C. Yost, General Counsel, Attention: NEPA Comments, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006

FOR FURTHER INFORMATION CONTACT: Nicholas C. Yost, General Counsel, Council on Environmental Quality (address above), 202-633-7032

SUPPLEMENTARY INFORMATION

1. Purpose

We are publishing for public review draft regulations to implement the National Environmental Policy Act. Their purpose is to provide all federal agencies with an efficient, uniform procedure for translating the law into practical action. We expect the new regulations to accomplish three principal aims: to reduce paperwork, to reduce delays, and at the same time to produce better decisions, thereby better accomplishing the law's objective, which is to protect and enhance the quality of the human environment.

These regulations replace the Guidelines issued by previous Councils, under Executive Order 11514 (1970), and apply more broadly. The Guidelines assist federal agencies in carrying out NEPA's most conspicuous requirement, the preparation of environmental impact statements (EISs). These regulations were developed in response to Executive Order 11991 issued by President Carter in 1977, and implement "the procedural provisions of the Act." They address all nine subdivisions of Section 102(2) of the Act, rather than just the EIS provision covered by the Guidelines, and they carry out the broad purposes and spirit of the Act.

President Carter instructed us that the regulations should be:

> "...designed to make the environmental impact statement more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives."

The President has also signed Executive Order 12044, dealing with regulatory reform. It is our intention that that Order and these NEPA regulations be read together and implemented consistently.

2. Summary of Changes Made By The Regulations

Following this mandate in developing the new regulations, we have kept in mind the threefold objective of less paperwork, less delay, and better decisions.

A. Reducing Paperwork

The measures to reduce paperwork are listed in sec. 1500.4 of the regulations. Neither NEPA nor these regulations impose paperwork requirements on the public. These regulations reduce such requirements on agencies of government.

i. Reducing the length of environmental impact statements. Agencies are directed to write concise EISs, which shall not normally be less than 150 pages, or, for proposals of unusual scope and complexity, 300 pages.

ii. Emphasize options among alternatives. The regulations stress that the environmental analysis is to concentrate on alternatives, which are the heart of the matter; to treat peripheral matters briefly; and to avoid accumulating masses of background data which tend to obscure the important issues.

iii. Using an early "scoping" process to determine what the important issues are. To assist agencies in deciding what the central issues are, how long the EIS shall be, and how the responsibility for the EIS will be allocated among the lead agency and cooperating agencies, a new "scoping" procedure is established. Scoping meetings are to be held as early in the NEPA process as possible -- in most cases, shortly after the decision to prepare an EIS -- and shall be integrated with other planning.

iv. Writing in plain language. The regulations strongly advocate writing in plain, direct language.

v. Following a clear format. The regulations spell out a standard format intended to eliminate repetitive discussion, stress the major conclusions, highlight the areas of controversy, and focus on the issues to be resolved.

vi. Requiring summaries of environmental impact statements to make the document more usable by more people.

vii. Eliminating duplication. To eliminate duplication, the regulations provide for federal agencies to prepare EISs jointly with state and local units of government which have "little NEPA" requirements. They also permit a federal agency to adopt another agency's EIS.

viii. Consistent terminology. The regulations provide a uniform terminology for the implementation of NEPA. For instance, the CEQ requirement for an environmental assessment will replace the following (nonexhaustive) list of comparable existing agency procedures: "survey" (Corps of Engineers), "environmental analysis" (Forest Service), "initial assessment" (Transportation), "normal or special clearance" (HUD), "environmental analysis report" (Interior), and "marginal impact statement" (HEW).)

ix. Reducing paperwork requirements. The regulations will reduce reporting paperwork requirements as summarized below. The existing Guidelines issued under Executive Order 11514 cover section 102(2)(C) of NEPA (environmental impact statements), and the new CEQ regulations cover sections 102(2)(A) through (I). The regulations replace not only the requirements of the Guidelines concerning environmental impact statements, but also replace more than 70 different sets of existing agency regulations, although each agency will issue its own implementing procedures to explain how these regulations apply to its particular programs.

Existing Requirements (Applicable Guidelines sections are noted.)	New Requirements (Applicable regulations sections are noted.)
Assessment (optional under Guidelines on a case-by-case basis; currently required, however by most major agencies in practice or in procedures) 1500.6.	Assessment (limited requirement: not required where there would not be environmental effects or where an EIS would normally be required) 1501.3, .4,
Notice of intent to prepare impact statement 1500.6.	Notice of intent to prepare EIS and commence scoping process 1501.7

Quarterly list of notices of intent 1500.6.	Requirement abolished
Negative determination (decision not to prepare impact statement) 1500.6.	Finding of no significant impact 1501.4.
Quarterly list of negative determinations 1500.6	Requirement abolished
Draft EIS 1500.7	Draft EIS 1502.9
Final EIS 1500.6, .10	Final EIS 1502.9
EISs on legislative reports ("agency reports on legislation initiated elsewhere") 1500.5(a)(1)	Requirement abolished
Agency report to CEQ on implementation experience 1500.14(b)	Requirement abolished
Agency report to CEQ on substantive guidance 1500.6(c), .14	Requirement abolished
Record of decision (no Guideline provision but required by many agencies' own procedures and in a wide range of cases generally under the Administrative Procedure Act and OMB Circular A-95, Part I, sec. 6(c) and (d), Part II, sec. 5(b)(4)).	Record of decision (brief explanation of decision EIS has been prepared; no circulation requirement) 1505.2.

B. Reducing Delay

The measures to reduce delay are listed in sec. 1500.5 of the regulations.

i. Time limits on the NEPA process. The regulations encourage lead agencies to set time limits on the NEPA process and require that they be set when requested by an applicant.

ii. Integrating EIS requirements with other environmental review requirements. Often the NEPA process and the requirements of other laws proceed separately, causing delay. The regulations provide for all agencies with jurisdiction over the project to cooperate so that all reviews may be conducted simultaneously.

iii. Integrating the NEPA process into early planning. If environmental review is tacked on to the end of the planning process, then the process is prolonged, or else the EIS is written to justify a decision that has already been made, and genuine consideration may not be given to environmental factors.

iv. Emphasizing interagency cooperation before the EIS is drafted. The regulations emphasize that other agencies should begin cooperating with the lead agency before the EIS is prepared in order to encourage early resolution of differences. By having the affected agencies cooperate early in preparing a draft EIS, we hope both to produce a better draft and to reduce delays caused by unnecessarily late criticism.

v. Swift and fair resolution of lead agency disputes. When agencies differ as to who shall take the lead in preparing an EIS or none is willing to take the lead, the regulations provide a means for prompt resolution of the dispute.

vi. Prepare EISs on programs and not repeat the same material in project specific EISs. Material common to many actions may be covered in a broad EIS, and then through "tiering" may be incorporated by reference rather than reiterated in each subsequent EIS.

vii. Legal delays. The regulations provide that litigation should come at the end rather than in the middle of the process.

viii. Accelerated procedures for legislative proposals. The regulations provide accelerated simplified procedures for environmental analysis of legislative proposals, to fit better with Congressional schedules.

C. Better Decisions

Most of the features described above will help to improve decisionmaking. This, of course, is the fundamental purpose of the NEPA process, the end to which the EIS is a means. Section 101 of NEPA sets forth the substantive requirements of the Act, the policy to be implemented by the "action-forcing" procedures of Section 102. These procedures must be tied to their intended purpose, otherwise they are indeed useless paperwork and wasted time. A central purpose of these regulations is to tie means to ends.

i. Securing more accurate, professional documents. The regulations insist upon accurate documents as the basis for sound

decisions. The documents should draw upon all the appropriate disciplines from the natural and social sciences, plus the environmental design arts. The lead agency is responsible for the professional integrity of reports, and care should be taken to keep any possible bias from data prepared by applicants out of the environmental analysis. A list of people who helped prepare documents, and their professional qualifications, should be included in the EIS.

ii. Recording in the decision how the EIS was used. The new regulations require agencies to point out in the EIS analysis of alternatives which one is preferable on environmental grounds -- including the often-overlooked alternative of no action at all. (However, if "no action" is identified as environmentally preferable, a second-best alternative must also be pointed out.)

Agencies must also produce a concise public record, indicating how the EIS was used in arriving at the decision. If the EIS is disregarded, it really is useless paperwork. It only contributes if it is used by the decisionmaker and the public. The record must state what the final decision was; whether the environmentally preferable alternative was selected; and if not, what considerations of national policy led to another choice.

iii. Insure follow-up of agency decisions. When an agency requires environmentally protective mitigation measures in its decision, the regulations provide for means to ensure that these measures are monitored and implemented.

Taken altogether, the regulations aim for a streamlined process, but one which has a broader purpose than the Guidelines they replace. The Guidelines emphasized a single document, the EIS, while the regulations emphasize the entire NEPA process, from early planning through assessment and EIS preparation through provisions for follow-up. They attempt to gear means to ends -- to insure that the action-forcing procedures of sec. 102(2) of NEPA are used by agencies to fulfill the requirements of the Congressionally mandated policy set out in sec. 101 of the Act. Furthermore, the regulations are uniform, applying in the same way to all federal agencies, although each agency will develop its own procedures for implementing the regulations. Our attempt has been with these new regulations to carry out as faithfully as possible the original intent of Congress in enacting NEPA.

3. Background

We have been greatly assisted in our task by the hundreds of people who responded to our call for suggestions on how to make the NEPA process work better. In public hearings which we held in June 1977, we invited testimony from a broad array of public officials, organizations, and private citizens, affirmatively involving NEPA's critics as well as its friends.

Among those represented were the U.S. Chamber of Commerce, which coordinated testimony from business; the Building and Construction Trades Department of the AFL-CIO, for labor; the National Conference of State Legislatures, for state and local governments; the Natural Resources Defense Council, for environmental groups. Scientists, scholars, and the general public were there.

There was extraordinary consensus among these diverse witnesses. All, without exception, expressed the view that NEPA benefited the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be trimmed down. Witness after witness said that the length and detail of EISs made it extremely difficult to distinguish the important from the trivial. The degree of unanimity about the good and bad points of the NEPA process was such that at one point an official spokesman for the oil industry rose to say that he adopted in its entirety the presentation of the President of the Sierra Club.

After the hearings we culled the record to organize both the problems and the solutions proposed by witnesses into a 38-page "NEPA Hearing Questionnaire." The questionnaire was sent to all witnesses, every state governor, all federal agencies, and everyone who responded to an invitation in the Federal Register. We received more than 300 replies, from a broad cross section of groups and individuals. By the comments we received from respondents we gauged our success in faithfully presenting the results of the public hearings. One commenter, an electric utility official, said that for the first time in his life he knew the government was listening to him, because all the suggestions made at the hearing turned up in the questionnaire. We then collated all the responses for use in drafting the regulations.

We also met with every agency of the federal govenment to discuss what should be in the regulations. Guided by these extensive interactions with government agencies and the public, we prepared draft regulations which were circulated for comment to all federal agencies in December, 1977. We then studied agency comments in detail, and consulted numerous federal officials with special experience in implementing the Act. Informal redrafts were circulated to the agencies with greatest experience in preparing environmental impact statements. Improvements from our December 12 draft reflect this process.

At the same time that federal agencies were reviewing the early draft, we continued to meet with, listen to, and brief members of the public, including representatives of business, labor, state and local governments, environmental groups and others. We also considered seriously and proposed in our regulations virtually every major recommendation made by the Commission on Federal Paperwork and the General Accounting Office in their recent studies on the environmental impact statement process. The studies by these two independent bodies were among the most detailed and informed reviews of the paperwork abuses of the impact statement process. In many cases, such as streamlining intergovernmental coordination, the proposed regulations go further than their recommendations.

4. Exclusion

It should be noted that the issue of application of NEPA to environmental effects occurring outside the United States is the subject of continued discussions within the government and is not addressed in these regulations. Affected agencies continue to hold different views on this issue. Nothing in these regulations should be construed as asserting that NEPA either does or does not apply in this situation.

5. Analysis and Assessment of The Regulations

Since Executive Order 12044 became effective on March 23, 1978, after the Council's draft NEPA regulations had completed interagency review, the extent to which Executive Order 12044 applies to the Council's nearly completed process of developing NEPA regulations is not clear. Nevertheless, the requirements of Executive Order 12044 have been undertaken to the fullest extent possible. The analyses required by sections 2(b), (c), (d), and 3(b), to the extent they may apply to the Council's proposed NEPA regulations, are available on request.

The Council has prepared a special environmental assessment of these regulations to illustrate the analysis that is appropriate under NEPA. The assessment discusses alternative regulatory approaches. Some regulations lend themselves to an analysis of their environmental impacts, particularly regulations with substantive requirements or those which apply to a physical setting. Although the Council obviously believes that its regulations will work to improve environmental quality, the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.

Both the analyses under Executive Order 12044 and the assessment described above are available on request. Comments may be made on both documents in the same manner and by the same time as the comments on the regulations.

6. Additional Subjects for Comments

Several issues have been brought to our attention as appropriate subjects to be covered in the regulations. They are difficult issues on which we particularly solicit thoughtful views.

a. Data bank. Many were intrigued by the idea of a national data bank in which information developed in one EIS would be stored and become available for use in a subsequent EIS. Public comment on the questionnaire led us to conclude, reluctantly, that the idea is impractical. In practice most environmental information is specific to given areas or activities. To assemble a nationwide data bank would demand financial and other resources that are simply beyond the benefits that may be achieved. We have not included a data bank in these regulations but have instead tried to insure that in the scoping process the

preparers of one EIS become aware of all related EISs so they can make use of the information in them. We would, however, welcome comment on this subject.

b. Encouragement for agencies to fund public comments on EISs when an important viewpoint would otherwise not be presented. The Council has been urged to provide either encouragement or direction to agencies, as part of their routine EIS preparation, to provide funds to responsible groups for public comments when important viewpoints would not otherwise be presented. Although we are acutely aware of the importance of comments to the success of the EIS process, we have not included such a provision. We would welcome comment on this subject also.

Conclusion

We look forward to your comments and help. To repeat, comments should be sent by August 11, 1978, to Nicholas C. Yost, General Counsel, Attention: NEPA Comments, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006.

Thank you for cooperating with us.

CHARLES WARREN
Chairman

Table of Contents

Part 1500. Purpose, Policy, and Mandate

Sec. 1500.1 Purpose

The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork -- even excellent paperwork -- but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Section 1500.2 Policy

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently, rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate

Parts 1500-1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (P.L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a finding of no significant impact, or takes action that will result in irreparable injury.

Sec. 1500.4 Reducing Paperwork

Agencies shall reduce excess paperwork by:

(a) Reducing the length of environmental impact statements (section 1502.2(c)), by means such as setting appropriate page limits (section 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (section 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (section 1502.2(b)).

(d) Writing envrionmental impact statements in plain language (section 1502.8).

(e) Following a clear format for environmental impact statements (section 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (sections 1502.14 and 1502.15) and reducing emphasis on background material (section 1502.16).

(g) Using the scoping process not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (section 1501.7).

(h) Summarizing the environmental impact statement (section 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (section 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope to eliminate repetitive discussions of the same issues (sections 1502.4 and 1502.20).

(j) Incorporating by reference (section 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (section 1502.25).

(l) Requiring comments to be as specific as possible (section 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (section 1503.4(b)).

(n) Eliminating duplication with State and local procedures by providing for joint preparation (section 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (section 1506.3).

(o) Combining environmental documents with other documents (section 1506.4).

(p) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (section 1508.4).

(q) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (section 1508.13).

Sec. 1500.5 Reducing Delay

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (section 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared rather than adversary comments on a completed document (section 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (section 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (section 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (sections 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (section 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (section 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (section 1506.2) and with other Federal procedures by providing for one agency's adoption of appropriate environmental documents prepared by another agency (section 1506.3).

(i) Combining environmental documents with other documents (section 1506.4).

(j) Using accelerated procedures for proposals for legislation (section 1506.8).

(k) Using categorical exclusions to exclude from environmental impact statement requirements categories of actions which do not individually or cumulatively have a significant effect on the human environment (section 1508.4).

(l) Using a finding of no significant impact and not preparing an environmental impact statement when an action not otherwise excluded will not have a significant effect on the human environment (section 1508.13).

Sec. 1500.6 Agency Authority

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to ensure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

Part 1501. NEPA and Agency Planning

Sec. 1501.1 Purpose

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA Early in Process

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

Each agency shall:

(a) As specified by sec. 1507.2 comply with the mandate of Sec. 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment."

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by sec. 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by other than Federal agencies before Federal involvement so that:

(1) The sponsor of the proposal initiates studies if Federal involvement is foreseeable.

(2) The Federal agency consults early with appropriate State and local agencies and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to Prepare an Environmental Assessment

An environmental assessment (sec. 1508.9) shall be prepared unless one is not necessary under the procedures adopted under sec. 1507.3(b). Agencies may prepare an assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to Prepare an Environmental Impact Statement

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under section 1507.3 whether the proposal is one which

(1) normally requires an environmental impact statement, or

(2) normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by subsection (a), prepare an environmental assessment (section 1508.9). The agency shall involve environmental agencies and the public, to the extent practicable, in preparing the assessment.

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) If the agency will prepare an environmental impact statement, the agency shall commence the scoping process (section 1501.7).

(e) If the agency determines on the basis of the environmental assessment not to prepare a statement, the agency shall prepare a finding of no significant impact (section 1508.13).

(1) The agency shall make the finding of no significant impact available in a manner calculated to inform the affected public as specified in section 1506.6.

(2) In certain limited circumstances the agency shall make the finding of no significant impact available for public review for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to section 1507.3(b), or

(ii) the nature of the proposed action is one without precedent.

Sec. 1501.5 Lead Agencies

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) proposes or is involved in the same action; or

(2) is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) More than one Federal, State, or local agency, one of which must be Federal, may act as joint lead agencies to prepare an environmental impact statement. (Sec. 1506.2)

(c) If an action satisfies the provisions of subsection (a) the potential lead agencies concerned shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question in a manner that will not cause delay. If there is disagreement among the agencies, the following factors (which are listed in descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) If potential lead agencies fail to agree on which agency shall be the lead agency as specified in subsection (c), (1) any Federal agency or (2) any State or local agency or private person substantially affected by the absence of agreement on lead agency designation may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in subsection (d) has not resulted within a reasonable time in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) a precise description of the nature and extent of the proposed action;

(2) a detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in subsection (2).

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine within 20 days after receiving the request and all responses which Federal agency shall be the lead agency and the extent to which the other Federal agencies concerned shall be cooperating Federal agencies.

Sec. 1501.6 Cooperating Agencies

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) To the maximum extent possible consistent with its responsibility as lead agency use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process.

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally a cooperating agency shall use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

Sec. 1501.7 Scoping

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues.

This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (sec. 1508.21) in the Federal Register.

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action).

(2) Determine the scope (sec. 1508.24) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement which is the subject of the meeting.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may comply with section 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(8) When practicable hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (sec. 1502.7).

(2) Set time limits (sec. 1501.8).

(c) An agency shall revise the determinations made under subsections (a) and (b) if substantial changes are made later in the proposed action or if significant new circumstances (including information) arise which bear on the proposal or its impacts.

Sec. 1501.8 Time Limits

Although the Council has decided that universal time limits for the entire NEPA process are too inflexible to prescribe, Federal agencies are encouraged to set time limits appropriate to individual action (consistent with sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.
(ii) Size of the proposed action.
(iii) State of the art of analytic techniques.
(iv) Degree of public need for the proposed actions, including the consequences of delay.
(v) Number of persons and agencies affected.
(vi) Degree to which relevant information is known and if not known the time required for obtaining it.
(vii) Degree to which the action is controversial.

(2) Set limits if an applicant for the proposed action requests them, provided that they are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(2) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal agency to set time limits.

Part 1502. Environmental Impact Statements

Sec. 1502.1 Purpose

The primary purpose of an environmental impact statement is as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation

To achieve the purposes set forth in sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those the ultimate agency decisionmaker considers.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory Requirements for Statements

As required by sec. 102(2)(C) of NEPA environmental impact statements (section 1508.11) are to be included in every recommendation or report

- on proposals (section 1508.22)
- for legislation and (section 1508.16)
- other major Federal actions (section 1508.17)
- significantly (section 1508.25)
- affecting (sections 1508.3, 1508.8)
- the quality of the human environment (section 1508.14).

Sec. 1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (sec. 1508.24) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (sec. 1508.17). Agencies shall prepare statements on broad actions to be relevant to policy and timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions, agencies may find it useful to evaluate the proposal(s) by one or more agencies in one of the following ways:

(1) Geographic, including actions occurring in the same general location, such as an ocean, region, or metropolitan area.

(2) Generic, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) Technological development including federal or federally assisted research, development or demonstration programs aimed at developing new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (sec. 1501.7), tiering (sec. 1502.20), and other methods listed in sec. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency makes or is presented with a proposal (section 1508.22) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can practically serve as an important contribution to the decisionmaking process and shall not be used to rationalize or justify decisions already made (secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies such statements shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency, appropriate preliminary environmental assessments or statements shall be commenced at the latest immediately after the application is received, but federal agencies are encouraged to prepare them earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

Sec. 1502.6 Interdisciplinary Preparation

Environmental impact statements shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be correlated to the scope and issues identified in the scoping process (sec. 1501.7).

Sec. 1502.7 Page Limits

The text of final environmental impact statements (e.g., subsections (d) through (g) of sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing

Environmental impact statements shall be written in plain language and may use appropriate graphics so that they may be understood by decisionmakers and the public. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, Final, and Supplemental Statements

Except as provided in section 1506.8, environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503. At the time the draft statement is prepared it must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of

the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. In the draft statement the agency shall make every effort to disclose and discuss at appropriate points in the text all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503. In the final statement the agency shall discuss at appropriate points in the text the existence of any responsible opposing view not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances, relevant to environmental concerns (including information), bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended Format

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed actions. The following standard format for environmental impact statements should be followed unless there is a compelling reason to do otherwise:

(a) Cover sheet

(b) Summary

(c) Table of Contents

(d) Purpose of and Need for Action

(e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act)

(f) Environmental Consequences (especially secs. 102(2)(C)(i), (ii), (iv), and (v) of the Act)

(g) Affected Environment

(h) List of Preparers

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent

(j) Index

(k) Appendices (if any)

If a different format is used, it shall include subsections (a), (b), (c), (h), (i) and (j) and shall include the substance of subsections (d), (e), (f), (g), and (k) as further described in sections 1502.11-1502.18 in any appropriate format.

Sec. 1502.11 Cover Sheet

The cover sheet shall not exceed one page. It shall include:

(a) The name of the responsible agencies including the lead agency and any cooperating agencies.

(b) The name of the proposed action that is the subject of the statement (and if appropriate the names of related cooperating agency actions), together with the State(s) and county(ies) (or the country if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA (sec. 1506.10)).

Sec. 1502.12 Summary

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall

stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and Need

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the action and alternatives. Normally this section shall not exceed one page.

Sec. 1502.14 Alternatives Including the Proposed Action

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Environmental Consequences (sec. 1502.15) and the Affected Environment (sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharpening the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for such elimination.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate the comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the no action alternative.

(e) Identify the environmentally preferable alternative (or alternatives if two or more are equally preferable) and the reasons for identifying it. If the alternative identified is for no action, the agency shall also identify the alternative other than no action that is environmentally preferable and the reasons for identifying it.

(f) Identify the agency's preferred alternative or alternatives if one or more exists in the draft statement and identify such alternative(s) in the final statement unless another law prohibits the expression of such a preference.

(g) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Environmental Consequences

This section forms the scientific and analytic basis for the comparisons under sec. 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. This includes the environmental impacts of the proposed action and alternatives, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The Council intends that preparers not cause duplication in the discussions under section 1502.14 and this section. This section shall include discussions of:

(a) Direct effects and their significance (sec. 1508.8).

(b) Indirect effects and their significance (sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local land use plans, policies, and controls for the area concerned.

(d) The environmental effects of alternatives including the proposed action. The comparisons under sec. 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Means to mitigate adverse environmental impacts (if not fully covered under sec. 1502.14(g)).

Sec. 1502.16 Affected Environment

The environmental impact statement shall succinctly describe the environment of the area or areas to be affected by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.17 List of Preparers

The environmental impact statement shall list the names, together with their qualifications and professional disciplines (sections 1502.6 and 1502.8), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible the names of persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the Environmental Impact Statement

Agencies shall circulate the entire draft and final environmental impact statements except as provided in section 1502.18(d) and 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) Any person, organization, or agency requesting the entire environmental impact statement.

(c) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement, the time for comment for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (sec. 1508.26). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate such discussions by reference and shall concentrate on the issues specific to the subsequent action. Tiering may also be appropriate for different stages of actions. (1508.26(b)).

Sec. 1502.21 Incorporation by Reference

Agencies shall incorporate material into an environmental impact statement by reference when to do so will cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or Unavailable Information

Agencies dealing with gaps in relevant information, including scientific uncertainty, shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information is essential to a reasoned choice among alternatives and is not known and the costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis.

Sec. 1502.23 Cost-Benefit Analysis

If a cost-benefit analysis is being considered for the proposed action, it shall be incorporated by reference or appended to the

statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall when a cost-benefit analysis is prepared discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities.

Sec. 1502.24 Methodology and Scientific Accuracy

Agencies shall insure the professional, including scientific, integrity of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement.

Sec. 1502.25 Environmental Review and Consultation Requirements

To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.) the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1972 (16 U.S.C. Sec. 1531 et seq.) and other environmental review laws.

Part 1503. Commenting

Sec. 1503.1 Inviting Comments

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of appropriate State and local agencies which are authorized to develop and enforce environmental standards, or any agency which has requested that it receive statements on actions of the kind proposed.

(3) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) After preparing a final environmental impact statement an agency may request comments on it before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under sec. 1506.10.

Sec. 1503.2 Duty to Comment

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved or which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. A Federal agency may (and a cooperating agency that is satisfied that its views are adequately reflected in the environmental impact statement would) reply that it has no comment.

Sec. 1503.3 Specificity of Comments

Comments on an environmental impact statement or on a proposed action shall be an specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both. When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

Sec. 1503.4 Response to Comments

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below specifying its response in the final statement. Possible responses are to:

(1) Modify the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous),

should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes are minor and are confined to the responses described in subsections (a)(4) and (5), agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (sec. 1506.9).

Part 1504. Predecision Referrals to the Council of Proposed Federal Actions Found to be Environmentally Unsatisfactory

Sec. 1504.1 Purpose

This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

Under Section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality", Section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

Under Sec. 102(2)(C) of the Act other federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for Referral

Environmental referrals should only be made to the Council after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what envrionmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for Referrals and Response

(a) A Federal agency making a referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in sec. 1504.3(c)(2) below.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) identify any existing environmental requirements or policies which would be violated by the matter,

(iii) present the reasons the referring agency believes the matter is environmentally unsatisfactory,

(iv) contain a finding by the agency whether the issue raised is one of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) give the referring agency's recommendations as to what mitigation alternatives, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council, the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

Part 1505. NEPA and Agency Decisionmaking

Sec. 1505.1 Agency Decisionmaking Procedures

Agencies shall adopt procedures (sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under Sec. 102(2) to achieve the requirements of Secs. 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review process so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the

relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of Decision In Those Cases Requiring Environmental Impact Statements

At the same time of its decision (or, if appropriate, its recommendation to Congress) each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95, Part I, sec. 6(c) and (d), and Part II, sec. 5(b)(4), shall state:

(a) What the decision was.

(b) If an alternative other than those designated pursuant to sec. 1502.14(e) has been selected, the reasons why other specific considerations of national policy overrode those alternatives.

(c) Whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not. For any mitigation adopted, a monitoring and enforcement program where applicable shall be adopted and summarized.

Sec. 1505.3 Implementing the Decision

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (sec. 1505.2(c)) and other conditions established in or during the review of the environmental impact statement and committed as part of the decision shall be implemented by the appropriate agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits, or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures proposed by any such agency and adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

Part 1506. Other Requirements of NEPA

Sec. 1506.1 Limitations on Actions During NEPA Process

(a) Until an agency issues a record of decision as provided in Sec 1505.2 (except as provided in subsection (c)), no action concerning the proposal shall be taken which would:

(1) have an adverse environmental impact; or

(2) limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a nonfederal entity, and is aware that the applicant is planning to take an action within the agency's jurisdiction that would meet either of the criteria in section 1506.1(a), then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action which may significantly affect the quality of the human environment and which is covered by the program unless such action:

(1) Is justified independently of the program; and

(2) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives; and

(3) Is itself accompanied by an adequate environmental impact statement.

Sec. 1506.2 Elimination of Duplication with State and Local Procedures

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication in NEPA and comparable State and local requirements, unless they are specifically barred from doing so by some other law. Except where an agency is proceeding in the manner specified by subsection (a), such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments and joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling the requirements of those as well as Federal laws so that one document will comply with all applicable laws.

(c) To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).

Sec. 1506.3 Adoption

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the agency treats the statement as a draft and recirculates it (except as provided below in subsec. (b)) and provided that the statement or portions thereof meets the standards for an adequate draft statement under these regulations.

(b) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(c) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining Documents

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency Responsibility

(a) If an agency relies on an applicant to submit initial environmental information, the agency should assist the applicant

by outlining the types of information required. In all cases, the agency should make its own evaluation of the environmental issues and take responsibility for the scope and content of environmental assessments.

(b) Except as provided in sections 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or under contract to the lead agency or where appropriate under sec. 1501.6(b), a cooperating agency. In the case of such contract it is the intent of these regulations that the contractor be chosen solely by the lead agency or by the lead agency in cooperation with cooperating agencies or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency or where appropriate the cooperating agency specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or any person from submitting information to any agency.

Sec. 1506.6 Public Involvement

Agencies shall:

(a) Make diligent effort to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, meetings, and the availability of environmental documents by means calculated to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern such notice shall include publication in the Federal Register and notice by mail to national organizations with interest in the matter and may include listing in the 102 Monitor.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and local agencies pursuant to OMB Circular A-95.
(ii) Following the affected State's public notice procedures for comparable actions.

(iii) Publication in local newspapers (in papers of general circulation rather than legal papers).
(iv) Notice through other local media.
(v) Notice to potentially interested community organizations including small business associations.
(vi) Publication in newsletters that may be expected to reach potentially interested persons.
(vii) Direct mailing to owners and occupants of nearby or affected property.
(viii) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful.

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion of intra- or interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action.

Sec. 1506.7 Further Guidance

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(i) research activities;

(ii) meetings and conferences related to NEPA; and

(iii) successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for Legislation

The NEPA process for proposals for legislation (section 1508.16) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law which shall accompany proposed legislation to the Congress. Preparation of a legislative environmental impact statement shall include consultation with appropriate agencies (which may be pursuant to OMB Circular A-19) and conform with the requirements of these regulations except as follows:

(a) There need not be a scoping process.

(b) The legislative statement shall otherwise be treated in the same manner as a draft statement except as further specified. There need not be a final environmental impact statement, provided that when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by sections 1503.1 and 1506.10.

(1) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(2) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. et seq.)).

(3) Legislative approval is sought for federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(4) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiciton.

(d) The Environmental Protection Agency may reduce the period for review required by section 1506.10 to insure that comments and responses are received by the appropriate Congressional committee prior to hearings on the proposal.

Sec. 1506.9 Filing Requirements

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street, S.W., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President.

Sec. 1506.10 Timing of Agency Action

(a) No decision on the proposed action shall be made or recorded under sec. 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described in subsec. (d) for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described in subsec. (d) for a final environmental impact statement.

Provided that when an agency has formally established an internal appeal process, through which agencies or the public may take appeals and make their views known after preparation of the final environmental impact statement, and which provides a real opportunity to alter the decision, an administratively reviewable decision in the proprosed action may be made after publication of the notice described in subsec. (d) for a final environmental impact statement. This means that the period for appeal and the period prescribed by subsec. (a)(2) may run concurrently. In such a case the environmental impact statement shall explain the timing and the public's right of appeal.

Provided further that when an agency's primary purpose is the protection of public health and safety, the agency may, with the approval of the Council, adopt procedures under sec. 1507.3 providing for a finding to be published in the Federal Register that it is necessary to waive the time requirement specified in sec. (a)(2) to preserve public health and safety.

Provided further that when an agency's primary purpose is the protection of public health and safety and when that agency publishes proposed rules in the Federal Register for a period of public review prescribed by a statute the agency administers, that time period and the period prescribed under subsec. (a)(2) may run concurrently.

(b) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently.

(c) Subject to subsec. (e) agencies shall allow not less than 45 days for comments on draft statements.

(d) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed with the Environmental Protection Agency the preceding week. The date of publication of this notice shall be the date from which the minimum time periods of this section shall be calculated.

(e) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see sec. 1507.3(d).) If the lead agency does not concur, the matter shall be referred to CEQ for resolution. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

Sec. 1506.11 Emergencies

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency proposing to take the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such waivers to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective Date

The effective date of these regulations is eight months after their final publication in the Federal Register.

(a) These regulations shall apply to the fullest extent practicable to ongoing activies and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement if the draft statemetn was filed before the effective date of these regulations. No completed environmental documents need be redone by reason of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

Part 1507. Agency Compliance

Sec. 1507.1 Compliance

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by section 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency Capability to Comply

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability, at minimum, to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on statements in the areas where the agency has jurisdiciton by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of Sec. 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency Procedures

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before spublishing them in the Federal Register for comment. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by Sections 1501.2(d) 1502.9(c)(3), 1503.1(c), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (section 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for proposed actions that are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified protions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in sec. 1506.10 when necessary to comply with other specific statutory requirements.

Part 1508. Terminology and Index

Sec. 1508.1 Terminology

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical Exclusion

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human

enviornment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (section 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact is needed. Any such procedures shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating Agency

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative Impact

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental Assessment

"Environmental Assessment"

(a) Means a public document for which a Federal agency is respeonsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of such a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by Sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. Most environmental assessments do not exceed several pages in length.

Sec. 1508.10 Environmental Document

"Environmental Document" includes the documents specified in secs. 1508.9, 1508.11, 1508.13 and 1508.21.

Sec. 1508.11 Environmental Impact Statement

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

Sec. 1508.12 Federal Agency

"Federal agency" means all agencies fo the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office.

Sec. 1508.13 Finding of No Significant Impact

"Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (section 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (section 1501.7(a)(5)).

Sec. 1508.14 Human Environment

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the interaction of people with that environment. (See the definition of "effects" (sec. 1508.8).) This means that exclusively economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Lead Agency

"Lead Agency" means the agency or agencies which have prepared or have taken primary responsibility to prepare the environmental impact statement.

Sec. 1508.16 Legislation

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations.* The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.17 Major Federal Action

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of

* The Council in consultation with OMB had been prepared to propose this wording and sec. 1508.12 for comment. Thereafter Sierra Club v. Andrus (D.C. Cir. No. 75-1871, May 15, 1978) was decided. We would appreciate comment on the implications of that case for these provisions.

significantly (section 1508.25). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action. If a Federal program is delegated or otherwise transferred to State or local government, unless Congress intended otherwise, the Federal agency shall continue to be responsible for compliance with the Act and shall insure the preparation of environmental impact statements if they would be required but for the delegation or transfer. If the Federal agency may legally require the State or local agency to follow an environmental impact statement process, as a condition of the delegation or transfer, it shall do so. If not, the Federal agency shall prepare the statements (except as provided in sec. 1506.5).

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (section 1506.8, 1508.16). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.18 Matter

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which Section 102(2)(C) of NEPA applies.

Sec. 1508.19 Mitigation

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.20 NEPA Process

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

Sec. 1508.21 Notice of Intent

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.22 Proposal

"Proposal" refers to that stage in the development of an action when an agency subject to the Act has a goal and is actively considering one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.23 Referring Agency

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.24 Scope

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (secs. 1502.20 and 1508.26). In scoping environmental impact statements agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities

that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.
(2) Other reasonable courses of actions.
(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be:

(1) Direct.
(2) Indirect.
(3) Cumulative.

d. Sec. 1508.25 Significantly

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (global, national), the affected region, the affected interests, and the locality. Significant varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic sites, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) Whether the action may have a significant adverse effect on an area or site listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) Whether the action may have a significant adverse effect on the habitat or an endangered or threatened species that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Sec. 1508.26 Tiering

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as design detail and environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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SPECIAL ENVIRONMENTAL ASSESSMENT OF REGULATIONS PROPOSED UNDER EXECUTIVE ORDER 11991 TO IMPLEMENT THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Prepared by
The Council on Environmental Quality
Executive Office of the President
May 1978

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I. INTRODUCTION

A. The National Environmental Policy Act

The National Environmental Policy Act was enacted by the Congress in 1969. As President Carter noted in his Environmental Message last year, "[i]n the seven years since its passage, it has had a dramatic -- and beneficial -- influence on the way new projects are planned." These changes have occurred under procedures established by the Council on Environmental Quality in its Guidelines on the Preparation of Environmental Impact Statements and agency regulations implementing NEPA.

Section 102(2) of NEPA requires, among other things, that Federal agencies prepare and consider environmental impact statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. An environmental impact statement must thoroughly assess the environmental effects of each such proposal and alternatives to the proposal, including alternative measures for avoiding or mitigating any adverse environmental effects. While an EIS must be prepared on important activities in the private sector which require some form of approval by a Federal agency, NEPA does not impose direct obligations on those outside the Federal government.

By requiring the responsible Federal official to consider an environmental impact statement, NEPA improves the chances that environmental factors will influence the course of agency action and lead to decisions which enhance environmental quality and avoid, minimize or reduce environmental harm. When considered, environmental analyses and impact statements reduce the risk that the potential adverse effects of Federal activities will be arbitrarily discounted or simply ignored.

Before an environmental impact statement is issued in final form, a draft of the document must undergo review and comment by Federal, State and local agencies, interested members of the public and others. The final statement must respond to the comments which are made on the draft or otherwise incorporate the comments into its analysis.

The review and comment period provides those interested in a proposal with the opportunity to supply additional environmental information and analysis for the EIS and thereby reduces the possibility that important data or materials will be overlooked. It also provides those with varied backgrounds, expertise and perspectives a chance to scrutinize an agency's analysis of environmental issues. This review is designed to uncover flaws in an agency's analysis so that the necessary corrections may be made. It also generates suggestions for improving the agency's proposal and recommendations on alternative courses of action that may preserve and enhance environmental quality.

In addition, the NEPA process gives interested citizens a chance to advise the Federal government of the extent to which they value the

quality of their environment. With a clearer understanding of the public's perspective on such matters, Federal officials stand in a better position to strike a balance in their decisionmaking which reflects the broader public interest in Federal activities affecting the environment.

Finally, Section 102(2) of NEPA contains other specific "action-forcing" provisions for use in conjunction with Section 102(2)(C) to ensure that environmental factors and alternatives are carefully weighed from the early phases of agency planning through the final stages of its decision-making and project implementation. Agencies are mandated diligently to design and pursue policies and programs which apprise the Federal government of the environmental implications of its actions before they are taken, whether they be large or small, worldwide or local, long or short term.

The United States General Accounting Office has stated that

> "When EIS preparation is integrated with and completed during project planning, it helps ensure that environmental amenities and values are given appropriate consideration along with the economic and technical factors in planning and decisionmaking."

According to the Commission on Federal Paperwork,

> "The impact of NEPA -- and the EIS -- on all levels of government has been significant, particularly in terms of increased public involvement in Federal agency decisionmaking."

And William Rodgers has noted that NEPA is "the Sherman Act of environmental law" which "strengthens the hand of Congress in overseeing agency actions with adverse environmental effects."

Finally, Fred Anderson, a noted authority on the subject, has stated that

> "The National Environmental Policy Act of 1969 unites a carefully worded statement of national environmental policy with a statutory plan of action to implement that policy throughout Federal Government. In this role, NEPA has begun to bring about fundamental reform on all levels of the federal decision-making process. After four years (the law was signed on New Year's Day, 1970), the Act still has far to go in achieving its ambitious goals. Yet the progress that it undeniably has made constitutes a giant stride toward revitalization of the bureaucratic processes that have for so long neglected environmental values."

B. Problems With The Existing Process

While NEPA has been a positive influence on Federal decisionmaking, several important problems have developed under this statute. First,

while the Council has issued and periodically revised Guidelines for implementing the EIS process, the status of these Guidelines remains unclear. The Council believes and some courts have agreed that the Guidelines establish non-discretionary standards for agency decision-making. However, some agencies view them as advisory only and do not recognize an obligation to comply with the Guidelines in their decision-making. Second, before it was amended Section 3(h) of Executive Order 11514 confined the Guidelines to Section 102(2)(C), the impact statement requirement.

As a result of both of these factors there is no uniform, government-wide approach to implementing NEPA, and varying agency practices have evolved under the statute. This in turn has produced inconsistent and untimely Federal actions and generally impeded coordination of the Federal effort to implement NEPA. It has also caused uncertainty and confusion among those outside of the Federal government seeking a role in the EIS process and diminished their ability to contribute relevant information and make informed comments on an agency's analysis. It has caused the private applicant the bewilderment of being confronted with many different means of implementing the same Federal law.

Third, many environmental impact statements contain technical evaluations which are difficult for the laymen to decipher. Such documents are more likely to be put on the shelf as reference material than carefully read by the final decisionmaker. Highly technical analyses are also difficult for outside groups to comprehend and comment upon.

Fourth, the preparation of environmental impact statements has tended to become an end in itself rather than a means to better decisionmaking. Section 102(2)(C)'s requirement of a "detailed statement" is the most clearly defined, firmly established standard under NEPA, and the Council's existing Guidelines center on the preparation of this document. It was only natural that members of the public seeking a role in the process, and courts faced with the task of interpreting this law, should focus on the EIS. In the meantime, however, NEPA's other important requirements for agency planning and decisionmaking have not received sufficient attention.

Fifth, some agencies adopt the "kitchen-sink" approach to discussing virtually all environmental issues raised by a project rather than concentrating on the most significant ones. This effort often results in large accumulations of materials that are difficult to assimilate both by members of the public attempting to evaluate a project and by Federal officials required to consider environmental factors in their planning and decisionmaking. Such documents are less useful to their readers than ones which focus on what is really significant.

Sixth, depending largely on the mission which they are charged by statute to perform, agencies have differing perspectives on the weight which should be accorded environmental factors in Federal decision-making. Disagreements among agencies over the environmental acceptability of proposed actions have increased. There has been no formal

means for resolving such disputes. The result has been that many interagency disagreements take far too long to settle or simply drag on indefinitely without final resolution. In other cases, agencies have undertaken harmful projects without attempting to accommodate environmental concerns raised by other Federal departments.

Finally, when taken together, these deficiencies have contributed to a broader and more general problem under the statute. Federal agencies implementing NEPA have generated excess paperwork, produced unnecessary delays and duplicated their efforts under the statute. As a result, scarce Federal resources have been unproductively spent and private applicants needlessly inconvenienced. Equally important, public confidence in the process has been undermined.

C. The President's Executive Order

The deficiencies in the existing process are largely administrative in nature and do not result from defects in the statute. This fact was noted by diverse interests including Members of Congress during public hearings held by the Council in June, 1977. The Council on Environmental Quality was created by the Congress to oversee the implementation of NEPA and to resolve administrative issues of this sort. On March 5, 1970, for example, President Nixon issued Executive Order 11514 directing the Council to issue guidelines to Federal agencies for the preparation of environmental impact statements. In similar fashion, on May 24, 1977 President Carter issued Executive Order 11991 amending Sections 2(g) and 3(h) of the earlier Order and directing the Council to issue binding regulations to Federal agencies for the implementation of Section 102(2) of the Act. The President's Executive Order provided that the regulations

> "will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. [They shall include] procedures (1) for the early preparation of environmental impact statements and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, for the Council's recommendation as to their prompt resolution."

By directing that the regulations be binding, the President sought to clarify the status of the Council's guidance on NEPA and to provide for a single set of uniform regulations to be followed by all Federal agencies. A significant result should be improved agency decisionmaking regarding environmental issues. When all agencies follow the same

regulations it should make it easier for them to work alongside one another in preparing and considering environmental impact statements under NEPA. Uniform regulations will also provide the public and State and local governments with a clearer understanding of how the Federal government functions under NEPA, and make it easier for private citizens to acquire the information they need to participate in the NEPA process. The confusion that exists within the private sector, among both business and individual citizens, which was created by different agencies applying the same law differently with different terminology and different procedures, will be greatly reduced.

Similarly, by extending the coverage of the regulations to all of the requirements in Section 102(2), instead of limiting them to the environmental impact statement, the President sought to achieve a better balance in the implementation of NEPA. The regulations should place renewed emphasis on what happens both before and after an EIS is prepared and focus attention on the extent to which environmental analyses actually contribute to environmental quality. The EIS will assume its appropriate role, not as an end in itself, but as a step in the NEPA process that begins with planning, goes through assessment and the statement to a decision, and ends with follow-up on that decision.

D. The Council's Decisionmaking To Date

The Council has tentatively decided that the objectives of the Executive Order can best be acheived by retaining the existing framework for the NEPA process, by clarifying and improving current procedures, by eliminating unnecessary requirements and by adopting the best elements of current agency NEPA practices. The Council's staff has developed draft regulations which are designed to produce better and more environmentally sensitive decisions, reduce paperwork and reduce duplication and delay in the NEPA process. The principal provisions in these draft regulations and alternatives to these provisions are discussed below at pps. 6-30.

During the course of its deliberations, the Council solicited oral and written testimony from all segments of the interested public. Federal, State and local agencies were also contacted. This process of consultation produced many responsible and creative suggestions for improving the NEPA process. Many of these alternatives remain under active consideration. No participant at the public hearings suggested that NEPA be amended. Virtually all of the participants believed that NEPA provides benefits but that some administrative reforms were needed.

In weighing these alternatives, the principal objective was to determine which of them was most likely to produce Federal decisions which avoided, minimized, or reduced adverse environmental effects. The goal was to improve agency decisionmaking by ensuring full and adequate consideration of environmental factors throughout the planning and decisionmaking process. The expected result is improved agency decisionmaking and a stronger Federal effort to preserve and enhance environmental quality. There were, of course, limitations on this effort.

First, the draft regulations developed by the Council and the alternatives considered in its deliberations would establish a process for the consideration of environmental factors in agency planning and decisionmaking. The procedures themselves would not require that any particular decision be reached based on these factors. In other words, the draft regulations and their alternatives would not establish substantive criteria for agency decisionmaking or otherwise address the importance which should be assigned environmental factors in evaluating major proposals. Nor would they constrain an agency's discretion in weighing all relevant factors before a final decision was reached. How the balance was struck for any particular project would depend both on NEPA's mandate and the mandate of other applicable laws, and the presence of other important factors such as budgetary constraints, technical limitations, economic criteria, competing considerations of national policy and political realities.

The regulations are designed to improve the chances that environmental considerations will influence the course of agency action and lead to decisions which preserve and enhance environmental quality, and avoid, minimize, and reduce environmental harm. In view of NEPA's salutary affect on Federal decisionmaking in the past, the Council is confident that the draft regulations would contribute appreciably to a better environment. Since the actual outcomes and impacts of all subsequent agency decisions under the regulations cannot be forseen and measured, however, the specific environmental implications of future Federal actions are too speculative to identify and evaluate in the context of the Council's current deliberations.

Moreover, the regulations do not concern any particular environmental media. Nor are they tied to a specific geographical area or environmental setting. They apply generally to Federal actions affecting the quality of the human environment. No specific environmental issue or problem is singled out for special consideration or action under the regulations.

In these circumstances, the Council's decisionmaking has focused largely on the factors, pro and con, bearing on the effectiveness of alternatives at the agency level. The alternatives were assessed in terms of their probable contribution to improved planning and decisionmaking under NEPA. The chief countervailing factors were the administrative resources -- time, manpower, and money -- required to implement each alternative. These considerations are discussed for each of the alternatives analyzed below.

II. ALTERNATIVES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

This section describes alternatives for implementing NEPA, assesses the factors, pro and con, bearing on their probable effectiveness at the

agency level, and discusses their significant administrative costs, if any. Alternatives are analyzed at four levels: "no action" alternatives; alternative concepts for regulations; alternative frameworks for the NEPA process; and alternative regulations for improving the existing process.

A. "No Action" Alternatives

Alternative #1: Rescind The Executive Order and Abandon The Effort To Reform The NEPA Process

Analysis:

A return to the status quo would eliminate the possibility that Federal agencies would be required to change existing procedures or otherwise commit resources to improving the NEPA process in order to correct the deficiencies identified in the Executive Order.

As the entity principally responsible for assessing the implementation of NEPA, it is incumbent upon the Council to address the deficiencies in the NEPA process by the most effective means available. Nothing has happened since the President issued Executive Order 11991 which suggests that these deficiencies are any less significant now. On the contrary, the overwhelming consensus among those testifying at the public hearings, those responding to the NEPA questionnaire, and Federal agencies subject to NEPA is that the effort to reform the NEPA process is timely, much needed and should go forward.

Alternative #2: Rescind The Executive Order But Revise The Existing Guidelines

Under this alternative, the Council would modify its existing Gudielines in an effort to reform the NEPA process.

There are significant limitations on what can be achieved through regulatory reform. Regulations cannot assure good writing or guarantee wise decision-making. The Council has revised its Guidelines in the past and Federal agencies are accustomed to this practice.

Before it was amended, Section 3(h) of Executive Order 11514 limited the scope of the Guidelines to the EIS requirement of Section 102(2)(C). In the absence of this change, the Council would not be authorized to implement the other procedural provisions of NEPA. In addition, the status of the Guidelines would remain unclear even after they were revised, and Federal agencies could continue to follow varying procedures under NEPA. Thus, the Council's ability to address the problems which have developed under NEPA would be significantly limited under this approach.

Alternative #3: Republish The Guidelines Without Change As Regulations

Analysis:

Under this alternative, the Council would convert its Guidelines to regulations, without changing their text. Agencies would in turn adopt implementing procedures which were consistent with the Council's regulations.

This alternative would preserve a process that was familiar and routinely followed by many Federal agencies, and require compliance from those agencies which have not previously adhered to the Guidelines. However, it would not address all of the problems which have arisen under NEPA or otherwise attempt to bring about needed change in Federal decisionmaking under the statute. Further, since the Guidelines are confined to Section 102(2)(C) of NEPA, this alternative would fail to meet the President's directive to implement the procedural provisions of NEPA and would perpetuate the emphasis on the preparation of an EIS rather than placing the document in perspective as a part of the planning and decisionmaking process.

B. Alternative Concepts For Regulations

Alternative #1: Direct Agencies To Issue Regulations Implementing Section 102(2) of NEPA

Description:

Under this alternative, the Council would direct all Federal agencies to develop and issue their own regulations implementing Section 102(2). The Council could identify the issues and problems which agencies should address in their regulations and review and approve each set. However, the responsibility for preparing and revising regulations would reside in the first instance with each agency, and each agency would have its own separate set of NEPA regulations.

Analysis:

The Council's regulations under this alternative would be short. They would afford agencies great latitude in tailoring the requirements of NEPA to the specific circumstances of their planning and decisionmaking.

This alternative would result in close to one hundred sets of agency regulations based on as many independent interpretations of NEPA. In view of the statute's broad standards and their susceptibility to varying interpretations, it would be difficult for the Council to determine whether an agency's proposed regulations were consistent with the law and would improve the NEPA process as required by the Executive Order. Where applicants were required to obtain approvals from more than one agency, their projects would be reviewed under separate and potentially inconsistent sets of NEPA procedures. Varying agency practices

would make it more difficult to coordinate Federal decisionmaking under NEPA. There would be no single set of regulations which could be used by citizens and state and local officials to understand and participate in the NEPA process.

Alternative #2: Issue One Set Of Comprehensive Regulations For All Agencies

Description:

Under this alternative, the Council would issue comprehensive and detailed regulations which specified precisely how Section 102(2) should be applied to each agency program and activity. For example, rather than providing that scoping shall occur "[a]s soon as practicable" after a decision to prepare an EIS as the draft regulations do, regulations issued under this approach would indicate the precise point in time when scoping would occur for EISs prepared under every agency program and activity. Agencies would not issue separate implementing procedures and would not exercise discretion in tailoring the requirements of Section 102(2) to the unique features of their decisionmaking process.

Analysis:

The goal of this alternative would be a single, uniform, government-wide set of regulations containing detailed guidance on how Section 102(2) should be applied to all agency programs and activities. There are literally thousands of Federal agency actions subject to Section 102(2) of NEPA. Individual agency decisionmaking procedures are complex and diverse. Regulations which specified precisely how Section 102(2) shall be incorporated in all of them would of necessity be long and complicated and require frequent revision. To develop comprehensive regulations of this sort, the Council would be required to undertake a major new effort to familiarize itself with the ever-changing details of planning and decisionmaking in each Federal agency.

Alternative #3: The Current Proposal: Issue "Umbrella" Regulations Establishing Broad Procedural Requirements For A Standard NEPA Process. Agencies Adopt Implementing Procedures Which Specify How These Requirements Will Be Fulfilled For Each Of Their Actions And Programs

Description:

Under this alternative, the Council would promulgate an "umbrella" set of standards for implementing NEPA across the government. Individual agencies would be responsible for tailoring these standards to their planning and decisionmaking through the mechanism of implementing procedures. The Council could retain authority to review and approve each agency's implementing procedures.

Analysis:

This alternative would produce a single, relatively simple and uniform set of regulations for all Federal agencies and thereby promote

intergovernmental coordination and improve public understanding of the process. By confining the regulations to the broader considerations of implementing NEPA, this alternative would allow more technical issues to be resolved by those at the agency level with background and experience in the details of their own planning and decisionmaking procedures.

This alternative represents a position between alternatives 1 and 2.

Alternative #4: Include "Subject Matter" Guidance In The Regulations

Description:

Under this alternative, which is a variation on Alternative #3, the regulations would identify specific types rather than generic categories of impacts which must be assessed under NEPA. In addition, the regulations would define the point at which environmental impacts acquired "significance" and triggered the EIS requirement (e.g. environment is significantly affected when 20% of an ecological community is disturbed or 10 acres of farmland are lost).

Analysis:

The purpose of this approach would be to reduce the uncertainty surrounding the term "significance" andto provide further specific guidance on the precise types of impacts which must be assessed in an EIS.

There are many environmental impacts which must be examined under NEPA. Whether these impacts are significant depends largely on the setting in which they occur. Many new types of impacts are discovered each year. Man's ability to measure and evaluate these impacts is constantly improving and notions of "significance" are therefore evolving. Even assuming such "subject matter" guidance could be given at a particular point in time, it would soon be out of date in view of the rapid growth of knowledge in this field. To the extent that such guidance can be given, it is more appropriate for agencies to do it in their implementing procedures and selection of categorical exemptions.

C. Alternative Frameworks For The NEPA Process

As noted, the Council has tentatively decided to reform the NEPA process within the existing framework. This proposed course of action was selected from several alternatives which are discussed below.

Alternative #1: Retain The Existing Process, Without Change, As Reflected in the Council's Current Implementing Guidelines For The Preparation Of Environmental Impact Statements

Description:

The existing process provides for environmental assessment and early public notice of proposed Federal actions under diverse procedures which

are left largely to the agency's discretion. Where the proposed action may significantly affect the quality of the human environment, the agency is required to prepare a draft environmental impact statement which thoroughly evaluates the environmental impacts of proposals and alternatives, including alternative measures for avoiding or mitigating any adverse environmental effects. Agencies provide early public notice of their decisions to prepare an EIS. Usually they provide similar notice for decisions not to prepare an EIS.

The draft environmental statement is circulated to other government agencies and members of the public for their review and comment. A final statement is then prepared incorporating the comments made on the draft statement together with the agency's written response to those comments.

Following issuance of the final statement, the agency is required to wait for a specified period of time prior to making a final decision on the proposed action. Prior to the decision, under Section 309 of the Clean Air Act, the Environmental Protection Agency may refer proposed actions it finds environmentally unsatisfactory to the Council which will seek to resolve significant environmental issues associated with the proposal. In conjunction with their own program requirements and OMB Circular A-19, agencies inform applicants and interested persons of their final decisions on a proposal, and in some cases, provide for administrative appeals before their decision is implemented. Under flexible procedures adopted at their discretion, some agencies monitor the implementation of measures established to mitigate the adverse effects of Federal actions, and take steps to see that they are enforced. Agencies are authorized to hold public hearings or meetings at any appropriate stage in the existing process from the early assessment and notice through the final decision and its implementation.

Analysis:

Pros:

The existing process provides a formal framework through which agencies incorporate environmental impact analysis and exploration of alternatives into their planning and decisionmaking functions. It also accords the public a firmly established role in environmental decisionmaking.

The existing process enhances intergovernmental coordination among Federal, State, regional and local agencies with concurrent jurisdiction over or mutual interests in proposed actions. Through review and comment on draft statements, governmental entities at all levels have improved their decisions by exchanging information and expertise, cooperating in planning and decisionmaking and identifying and resolving environmental issues and problems.

The existing process has been in place for approximately eight years. Some Federal agencies routinely follow this process to review the environmental consequences of significant proposals.

Cons:

The existing process is not uniformly followed by all Federal agencies. Inconsistent agency practices and terminology are an obstacle to coordinating Federal efforts to implement NEPA in some cases.

Agency responsibilities in certain key areas are not clearly understood. In recent years, agency officials and members of the public have requested further guidance on what these responsibilities are and how they can best be met under NEPA.

The existing process tends to focus on the preparation of the environmental impact statement as an end in itself, rather than as one aspect of overall agency planning and decisionmaking. It does not place sufficient emphasis on weighing environmental factors in the early stages of agency planning and the latter stages of agency decisionmaking. Environmental analysis has become a highly technical and specialized field.

These factors have contributed to a trend toward large, unwieldy and technical documents under the existing process.

Alternative #2: Mandate A Briefing Style EIS

Description:

Under this alternative, the only change made in the existing process would involve the length and character of the environmental impact statement. The environmental impact statement would normally be less than 50 pages in length, would be directed largely to an analysis of alternatives, and would be tailored to the needs of the primary Federal decisionmaker in the style of a briefing document that underscored salient factors and issues. Background information and analysis relied upon by those preparing the EIS would be assembled in a supporting document that would be available for review upon request or, at the agency's discretion, circulated as an appendix to the EIS. The briefing style EIS would cross-reference these source materials.

Analysis:

Pros:

A briefing style EIS would be shorter and more focused on alternatives and key issues. It would take less time to read and would underscore the crucial factors which should be weighed in choosing among alternative proposals. As such, the document would be more valuable to primary decisionmakers than a longer, more detailed analysis.

Cons:

The strict limitations on its length would constrain the range and depth of analysis contained in a briefing style EIS and make the document more

conclusory in nature. The underpinnings of the agency's reasoning and the basis for its conclusions would be less apparent from the face of the document. It would be necessary to go beyond the contents of the briefing style EIS and to review the materials assembled in the supporting document in order to evaluate the quality of the agency's analysis. The supporting document could become a repository for lengthy and unanalyzed materials that would be difficult to use for this purpose.

Alternative #3: Reform The Process, As Reflected in The Draft Regulations

Description:

This alternative would reform the existing process by clarifying and improving current procedures, by eliminating unnecessary requirements and by adopting the best elements of current agency NEPA practices. An agency would be authorized to exclude whole categories of minor actions from NEPA reviews where it found that such actions would not significantly affect the quality of the human environment. An early environmental assessment of proposed Federal actions would be required, rather than recommended, wherever the agency determined that an action may have significant effects on the human environment. The assessment would include an analysis of alternatives and other factors to be weighed in the initial planning stages, regardless of whether an EIS was ultimately prepared. The public notice for proposed Federal actions would be standardized.

This alternative would establish a scoping process by which the affected parties could develop a consensus on the scope and coverage of environmental analysis and identify those issues which should receive extensive treatment in an EIS and those which should not. Time limits for the completion of the EIS process or any portion thereof could also be set during the scoping process.

The reform proposal would provide further, more specific guidance on the contents and format of a draft environmental impact statement and recommend page limitations -- less than 150 pages for ordinary proposals, less than 300 pages for proposals of unusual scope or complexity -- that would normally apply to EISs. Agencies would be directed to place greater emphasis on analyzing the alternatives facing Federal decision-makers and to identify both the environmentally preferable alternative or alternatives and the alternative or alternatives which they are inclined to select. Material now responsible for much of the bulk in current EISs, particularly the descriptions of the existing setting, would be cut drastically. Discussions of subsections (i), (ii), (iv), and (v) of Section 102(2)(C) would be in one section. Environmental impact statements would focus analysis and discussion on those factors, issues and information necessary to understand the analysis of alternatives.

The reform proposal would strengthen the review and comment process by requiring, rather than recommending, that agencies with jurisdiction by

law or special expertise comment on draft environmental impact statements. It would also broaden and formalize the pre-decision referral process by authorizing all agencies (rather than just EPA) to refer proposals they find environmentally unacceptable to the Council and by establishing procedures and time limits for implementing this process. The Council has used this system under informal guidance to agencies for eight months. It has worked well.

The reform proposal would require a written "record of decision" on agency actions for which an EIS had been prepared. This brief document would explain the agency's choice of alternatives, and the measures that would be taken to minimize environmental harm. Where an environmentally preferable alternative was not selected by the agency, the agency would be required concisely to identify those factors which led to its rejection. The agency would be required to monitor the steps taken to minimize environmental harm, and, upon request, to report to the public on their implementation.

The reform proposal would provide for the expedited resolution of lead agency disputes by the Council. It would also provide for the designation of "cooperating agencies" to assume responsibility for portions of the EIS within their special competence and to share their expertise with the lead agency. Under the proposal, Federal, State, and local agencies could cooperate in the joint preparation of a single EIS, rather than prepare several such documents. In every case, a Federal agency would be required to ensure that private parties retained to assist in the preparation of an EIS had no conflict of interest which could compromise the objectivity of their analysis.

The reform proposal would establish distinct procedures for preparing EISs on legislative proposals. In the ordinary case, a single statement would accompany the proposal to Congress and be circulated for review and comment to Federal, State and local agencies and the public. No revised statement containing public comments and responses would be required.

Analysis:

Pros:

The reform proposal is designed to place the preparation of environmental documents in the context of a larger process that spans the early stages of planning Federal actions through their final implementation. It is intended to ensure that environmental factors are actually considered alongside economic and technical ones each step of the way. It represents a shift in emphasis away from the preparation of environmental documents for their own sake and toward the quality of the environmental decisions themselves.

The reform proposal would facilitate public involvement at key stages of environmental planning and decisionmaking. It would make agencies explain their actions significantly affecting the environment by requiring

a written explanation of their decision. Agencies would be required, upon request, to issue public reports on the effectiveness of the measures taken to minimize environmental harm. These requirements are designed to insure that the NEPA process is in fact used by Federal officials so that their decisions reflect the benefits of the law and the process.

The reform proposal would strengthen cooperation among government agencies by encouraging the joint preparation of environmental documents as well as the coordination of analyses. By providing for the timely involvement of all interested government agencies in the preparation of an EIS, the reform proposal would enable them to develop an early consensus on what the document should and should not contain and avoid disagreements, and possible delays, in the latter stages of the process.

While this proposal would make certain reforms in some aspects of agency planning and decisionmaking, it would not involve major departures from the existing process. It would clarify agency responsibilities at certain critical stages, establish procedures for avoiding the duplication of environmental analyses, and direct agencies to prepare shorter, more analytic environmental impact statements that focused on the real choices facing Federal decisionmakers and the significant environmental consequences of each.

Cons:

Complying with the more formal, structured process envisioned by the reform proposal could require Federal agencies to devote additional resources to complying with NEPA, at least while the new regulations were being first implemented. Sometimes brevity is more difficult than wordiness. At a minimum, agencies would be required to modify their current practices in prescribed ways.

The detailed guidance incorporated in the reform proposal could constrain agencies from adopting creative approaches to NEPA compliance or using innovative methodologies for their environmental analysis. By establishing fixed requirements and reducing the diversity that now characterizes the process, the reform proposal could make it more difficult for agencies to integrate NEPA with their more fluid planning and decisionmaking functions.

Alternative #4: Prescribe A Single EIS

Description:

Under this alternative, a single environmental impact statement would take the place of the draft and final statements prepared under the existing process. The single EIS would be prepared at the same stage that the draft EIS is prepared under current procedures. Instead of preparing a final statement following the period for review and comment, the agency would publish and circulate a compilation of all comments received on the EIS and its written responses to the comments as part of the decision document. Rather than waiting 30 days between the filing of

a final statement and issuing a record of decision, as required by the reform proposal, the agency would be required to wait 30 days between the record of decision and project implementation. This period would give other agencies and the public an opportunity to learn about and raise any final concerns regarding the decision. Otherwise, the procedures would be similar to those comprising the reform proposal.

Analysis:

Pros:

This alternative eliminates the paperwork and time involved in preparing a final environmental impact statement. It would allow the agency to concentrate its efforts on a response to the comments and the ultimate decision itself. The single EIS proposal would simplify the NEPA process somewhat and could make it easier to combine with other agency decisionmaking functions. The fact that comments on the single EIS would be compiled and published as a separate volume could enhance their role in the final stages of agency decisionmaking.

Cons:

This alternative would dispense with a single, comprehensive and integrated final document which incorporated comments received on the agency's environmental analysis and reflected the agency's responses to those comments. The single-EIS proposal would make it more difficult to assess how such comments and the responses thereto altered an agency's analysis and its decision and place the burden on those involved in the process to make this determination for themselves. This alternative would represent a departure from the existing process and require important adjustments in current agency practices.

Alternative #5: Implement A Multi-Stage EIS Process

Description:

This alternative would provide for a staged analysis of a proposed action's feasibility and design. Each stage would be confined to discrete issues and provide the agency with the basis for deciding whether the proposal should be considered further or not. The feasibility of the proposed action would be initially evaluated in a "prospectus" that included, among other things, an inventory of resources that might be affected by the proposed action. Based on the prospectus, the agency would determine whether to proceed with a more sophisticated in-depth feasibility analysis in the form of a "preliminary assessment" of the proposal.

Alternative designs for feasible projects would be evaluated in a "detailed assessment." This document would analyze the specific environmental impacts of alternative designs and identify the alternative which would be least harmful to the environment.

Once a design was selected, a "detailed action plan" would explore alternative measures to minimize its adverse environmental effects, and set forth a program for monitoring the effectiveness of these measures. Following each stage of this process, the agency's analyses would be subject to public review and comment.

Analysis:

Pros:

By providing for an independent and early analysis of a proposal's feasibility, this alternative would enable agencies to identify and reject unwise projects before public or private resources were spent pursuing them. In the case of a private project, an applicant could approach an agency with the outlines of a proposal, rather than an elaborate and full-scale application, and request an analysis of its feasibility. Significant front-end planning expenditures would not be lost if the project was deemed infeasible at this early stage.

In the case of private projects, the feasibility analyses prepared under this alternative would involve agency personnel in the early stages of the applicant's planning process and facilitate a cooperative approach to the project in the event it went forward. The multi-stage EIS process would afford the public an opportunity to comment separately on the feasibility and design of every proposal.

Cons:

The multi-stage EIS is geared primarily to the analysis of construction projects and would be difficult to implement in the context of Federal programs and policies where the feasibility-design distinction has little relevance. By formally bifurcating the analysis of a proposal's feasibility and design, this alternative could make it more difficult to determine whether and to what extent considerations of design affect the proposal's overall feasibility. Where Federal personnel became involved in the early stages of an applicant's planning process under this alternative, their objectivity in subsequent stages of agency decision-making could be jeopardized by an on-going, close working relationship with private parties promoting the project. The multi-stage EIS represents a major departure from the existing process and would require a fundamental change in the Federal government's approach to NEPA if universally mandated.

D. Alternative Provisions For Improving The NEPA Process

Under Executive Order 11991, regulations implementing Section 102(2) of NEPA must be designed to accomplish three primary goals: First, the regulations should be designed to improve environmental decisionmaking by making the EIS process more useful to decisionmakers and the public, by emphasizing the need to focus on real environmental issues and

alternatives and by ensuring that agencies have conducted the necessary environmental analyses to support their decisions. Second, the regulations should reduce paperwork by discouraging the accumulation of extraneous background data and directing that impact statements be clear, concise and to the point. Finally, the regulations should reduce delays and duplication under NEPA by providing for the early preparation of environmental impact statements, prompt resolution of interagency disagreements, and better coordination among Federal, State and local agencies involved in the EIS process.

As noted, the Council has tentatively determined to pursue these objectives through reforms in the existing NEPA process. This section of the memorandum will describe the provisions in the draft regulations which are designed to achieve these goals. Where alternative approaches were considered the memorandum will analyze why the draft provisions emerged as the preferred choice. The analysis will discuss how the draft provisions and alternatives affect existing decisionmaking procedures, factors which may bear on their effectiveness, and their significant administrative costs, if any.

1. Improving Environmental Decisionmaking.

The following discussion analyzes the provisions in the draft regulations which are designed to improve environmental decisionmaking, and alternatives.

(i) Provisions For Emphasizing Real Alternatives and Their Impacts

The draft regulations define the term "proposal" as the stage in the development of an action when an agency is "actively considering one or more alternative means" of accomplishing an identified goal. Section 1508.22. By focusing attention on alternatives, this provision is intended to ensure that alternatives will be fully considered in the early critical phases of agency planning and to set the stage for a genuine assessment of real choices facing Federal decisionmakers throughout the NEPA process.

Section 1508.9(b) of the draft regulations requires that alternatives be evaluated in an environmental assessment regardless of whether an EIS is ultimately prepared. The regulations also designate "alternatives" as one aspect of a statement's proper scope and thereby ensure that this issue will receive early attention in the scoping process if an EIS is required. Section 1508.24(b)

The draft regulations provide that an EIS must encompass the range of alternatives which a decisionmaker ultimately considers. Sections 1505.1(f), 1502.2(e). Another approach would have required an EIS to cover each specific alternative (rather than the range of alternatives). Where numerous variables are present, there may be a large number of alternative combinations and mixes of these variables. So long as the range of variables and possible combinations are considered, there is no need specifically to identify and assess every conceivable alternative.

The regulations provide for a separate section of the EIS directed to a comparative analysis of alternatives. Section 1502.14. Another approach would have combined this analysis with the discussion of environmental impacts. However, a combined format would lengthen this portion of the document and make it more difficult to present a succinct comparison of the primary environmental advantages and disadvantages of each alternative.

Section 1502.14(b) of the draft regulations requires that agencies discuss each alternative in detail and notes that this discussion provides the basis for the evaluation of their comparative merits. An earlier version of this section requiring "substantially equal treatment" for each alternative was rejected as too inflexible. Alternatives may differ in size, complexity and degree of environmental impact, and there is no compelling reason why substantially the same number of pages must be devoted to each alternative.

Section 1502.14(e) of the draft regulations requires agencies to identify the environmentally preferable alternative or alternatives and the reasons for identifying them. If the alternative identified is for no action, this section would require the agency to identify the alternative other than no action that is environmentally preferable and the reasons for identifying it.

In some circumstances, the no action alternative may be unrealistic. Requiring the agency to identify the second most preferred alternative in such cases would focus attention on the potentially more realistic choices available to the agency. It would also bring the debate over which actions would most preserve and enhance environmental quality out into the open among agency planners and decisionmakers. On the other hand, this approach may confer the mantle of "environmental preferability" on an alternative which involves the potential for serious harm to the environment.

Section 1502.14(f) requires an agency to identify its preferred alternative or alternatives in the draft statement. Another approach would defer identification of the agency's perferred alternative until the final statement or not require it at all. Where an agency commits itself to a preferred alternative in the early stage of the process, there is a risk that it will not keep an open mind to other options in the latter phases of its decisionmaking. On the other hand, unless the preferred alternative is disclosed in the draft statement, members of the public and others will not necessarily accord adequate consideration to and analysis of it during the period for review and comment.

Thought was also given to requiring the identification of a single preferred alternative, rather than allowing the identification of two or more. When more than one alternative is identified public scrutiny is diffused. However, identifying a preferred alternative is not feasible where agencies have yet to settle on a preferred course of action at the draft stage. In such circumstances, agencies should be encouraged to keep an open mind as the NEPA process runs its course, rather than be compelled prematurely to express a preference for a particular course of action.

Where the environmentally preferable alternative is not adopted, Section 1505.2 requires the agency to explain the reasons why other specific considerations of national policy overrode that alternative in a written record of decision. This requirement is designed to ensure that agencies give serious consideration to such alternatives and publicly explain why they chose not to adopt them. Further, the requirement is intended to help insure that the NEPA process is integrated into the agency's decisionmaking process and that the agency's decisions do in fact reflect the contribution and insights of NEPA's requirements.

(ii) The Environmental Assessment

Section 1501.4 requires the preparation of an environmental assessment for all proposals which may possibly have significant affects on the environment. The assessment is intended to provide the agency with the information it needs to determine whether an EIS on the proposal is required. At the same time, its analysis of alternatives and their impacts is designed to enhance agency decisionmaking even if no further analysis is performed.

Another approach requiring an assessment for all actions, including those which clearly would not significantly affect the environment, was rejected as too great an administrative burden. There are literally thousands of such actions undertaken each year which are not now subject to the assessment process. The authorization for categorical exclusions should make clear an agency's ability to decide what actions will not need assessments or statements.

(iii) The Scoping Process

Section 1501.7 of the draft regulations establishes a formal mechanism whereby agencies, in consultation with affected parties, can identify the significant issues which must be discussed in detail in an EIS (as well as those that do not require detailed study) and allocate responsibilities for preparation of the document. This section provides that a scoping meeting is to be held when practicable.

An alternative approach would have simply encouraged (rather than required) agencies to undertake scoping. This approach would have provided agencies with additional flexibility in this area but probably would have produced inconsistent agency practices and failed to ensure that the benefits of scoping were widely realized in Federal decisionmaking.

Another approach would have required scoping meetings in every case where an EIS was prepared. This approach could result in unnecessary administrative burdens where the important environmental issues were already clearly identified, the responsibility for preparing the document was not in question and alternative means were available for involving affected parties regarding scoping issues.

(iv) The Record of Decision

Section 1505.2 of the draft regulations requires agencies to produce a concise public document explaining their decision where an environmental impact statement has been prepared. The record of decision is intended to disclose an agency's logic in reaching decisions having significant environmental impacts. In addition, it should further integrate the NEPA process with the agency's decisionmaking process, thereby insuring that the benefits of the EIS process are more likely to be realized.

An alternative approach would have required a record of decision for all agency actions affecting the environment, not just those for which an EIS was prepared. Preparing a record of decision for thousands of actions which fall within NEPA's purview but do not significantly affect the quality of the human environment would represent a substantial additional administrative burden for agencies.

As proposed in the draft regulations, the record of decision would, where appropriate, identify the reasons why other specific considerations of national policy overrode the environmentally preferable alternative or alternatives. Section 1505.2(b). Another approach would have required the agency simply to identify the factors which it considered in reaching its decision without explaining how they were weighed against the environment. This approach would accord agencies more latitude in explaining their decisions but would probably not produce as analytical an explanation or one geared to the purposes of the Act.

The record of decision would be available to the public upon request under the Freedom of Information Act and other federal laws. The suggestion that it be formally circulated to all interested parties was rejected as an unnecessary administrative burden. Similarly, since an agency is already required to wait for a specified period following the issuance of a final statement before implementing its decision, a second waiting period following the issuance of a record of decision was deemed unnecessary. Finally, a suggestion that any documents used by the agency in making its final decision be appended to the record of decision was rejected. Such documents could otherwise be available upon request. Appending them to the record of decision could substantially lengthen this document and make it less useful for those seeking a succinct explanation of agency action.

(v) Provisions For Ensuring More Analytic, Accurate and Objective Environmental Impact Statements

(a) List of Preparers

Section 1502.17 of the draft regulations requires an EIS to identify and briefly describe the qualifications of those persons primarily responsible for preparing it. The basic objective of this provision is to improve the quality of EISs, to aid in implementing Section 102(2)(A) and to enhance the professional role of impact statement preparers by providing that their contributions, especially in background studies, be attributed and thereby made a part of the literature of their disciplines.

An alternative approach would have required the EIS to identify a single principal author for each section of the EIS. This approach was deemed infeasible since many EISs are prepared by teams of agency personnel without any single individual assuming primary responsibility for entire sections of the document. Nor would it be practical to identify the authors of individual pages or paragraphs in the EIS.

Another alternative would have required that agency offices rather than personnel be identified. This approach would decrease recognition of personal performance and responsibility and thereby reduce the incentive that Section 1502.17 provides for improving the quality of EISs.

(b) Agency Responsibility For Environmental Impact Statements

Section 1506.5 of the draft regulations provides that every environmental impact statement shall be prepared directly by or under contract to a Federal agency. While Federal agencies would also be required to take responsibility for the scope and content of environmental assessments, the actual preparation of these documents could be performed by non-Federal agencies or private organizations or applicants. Before a contractor could prepare an EIS or any part thereof it would be required to execute a disclosure statement prepared by a Federal agency which specified that it had no financial or other interest in the outcome of the project.

There were two primary alternatives to this draft provision. One alternative would have permitted the preparation of EISs by non-Federal agencies or organizations not under contract so long as the Federal agency retained ultimate responsibility for their scope and content. This approach would divorce the preparation of the EIS from Federal agency planning and decisionmaking. Moreover, the experience of the Council has been that EISs prepared by such applicants may be self-serving.

A second alternative would require Federal agencies to prepare all environmental documents and prohibit contracting for these purposes. A variation of this alternative would require Federal agencies to prepare specified portions of environmental documents such as the alternatives section of an EIS without outside assistance. The difficulty with both approaches is that Federal agencies frequently do not possess the expertise necessary to analyze adequately every issue raised by a proposal and must use other agencies or private organizations to provide the necessary analytical expertise so that the agency can adequately consider and weigh the alternatives in making its decision.

(c) Methodologies

Section 1502.24 of the draft regulations requires agencies to identify the methodologies used in preparing the analyses contained in environmental impact statements. A requirement that methodologies be explained as well as identified was rejected on the grounds that it would lengthen

the EIS and impose an additional burden on those who prepared it without contributing materially to the overall usefulness of the document.

(d) Interdisciplinary Analysis

Section 1502.6 of the draft regulations provides that environmental impact statements shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. Section 1507.2 of the draft regulations provides that each agency shall be capable (in terms of personnel and other resources) of complying with the provisions of Section 102(2) of NEPA and other requirements and shall designate a person to be responsible for overall review of an agency's NEPA compliance.

In the alternative, the regulations could have specified the disciplines required to analyze particular kinds of environmental issues and required agencies to establish interdisciplinary teams comprised of personnel with prescribed backgrounds. However, agency personnel can effectively make such arrangements after weighing all relevant factors on a case-by-case basis.

(e) The Summary of an EIS

Section 1502.12 of the draft regulations provides that every EIS shall have a summary which stresses the major conclusions and describes areas of controversy and critical issues discussed by the agency. Section 1502.19 provides that in prescribed circumstances the summary may be circulated in lieu of a draft or final EIS to all interested parties except those requesting the entire EIS, those commenting on the final EIS, government agencies with jurisdiction by law or special expertise with respect to environmental issues addressed in the EIS, and certain others.

An alternative provision allowing the circulation of the summary to all parties in every case would reduce the amount of paper initially circulated but significantly limit public access to the complete document and make public review and comment less meaningful. A second alternative of merging the summary with the comparison of alternatives would have provided for the presentation of basic decisional information in a single document. However, the benefits gained from having an independent summary would be lost, including the possibility of circulating only the summary in specified circumstances.

(vi) Mitigation and Monitoring

Section 1505.3 of the draft regulations requires Federal agencies to provide for the implementation of mitigation measures adopted during the EIS process. It also authorizes agencies to monitor the results of mitigation efforts and encourages them to do so in important cases. Because every case does not involve significant environmental impacts, requiring monitoring of mitigation measures in every case was considered not necessary and unduly burdensome.

2. Reducing Paperwork.

This section analyzes the provisions in the draft regulations and alternative methods for reducing paperwork.

(i) Page Limits

Section 1502.7 of the draft regulations provides that final environmental impact statements shall normally be less than 150 pages long and, for proposals of unusual scope or complexity, shall normally be less than 300 pages. Other sections of the draft regulations establish page limits for the cover sheet ("shall not exceed one page") and the summary (will normally be less than 15 pages long). Section 1508.9 provides that an environmental assessment normally would not exceed several pages in length.

In the alternative, the regulations could have established mandatory page limits that would apply in every case rather than limits which were "normally" applicable. This would ensure that the length of EISs would be reduced to the fixed page limit. However, NEPA requires a thorough evaluation of alternatives and significant environmental impacts for an immense variety of major Federal actions. A more flexible approach was adopted in the regulations to ensure that this fundamental goal was not jeopardized by arbitrary or unrealistic limitations on length.

A second alternative would have simply encouraged agencies to prepare shorter documents in accordance with general criteria for determining an appropriate length. We considered that suggesting generally applicable maximum lengths would be more effective in reducing the length of EISs.

A final alternative would have created an incentive for preparing shorter documents by linking the length of an EIS to the amount of time allocated for public review and comment. This alternative would provide members of the public additional time to evaluate longer and more complicated documents. Agencies seeking to expedite completion of the NEPA process would have an incentive to avoid longer EISs because longer public comment and review periods would follow. For many Federal actions the usual duration of the public review and comment period is not a significant portion of total project time and agencies would not view the prospect of longer public review periods as a strong disincentive to longer documents. And a longer comment period would probably not add appreciably to the time required to complete the entire NEPA process.

(ii) Abbreviated Discussion of Less Important Issues and Material

Several sections of the draft regulations stress generally the importance of summarizing, consolidating or simply referencing less important issues and materials in the EIS. See e.g. Section 1502.2(b). The distinction between what is important and what is not depends on the circumstances of each proposal. The regulations leave the implementation of these limitations to the agency.

(iii) Circulation of Summary in Lieu of EIS

As discussed above, where an EIS is unusually long Section 1502.19 permits, with certain exceptions, a summary to be circulated in lieu of the entire document. Persons and organizations requesting an EIS, Federal agencies with jurisdiction by law or special expertise with respect to the proposal and certain others would be entitled to a copy of the entire EIS. In the alternative, the regulations could have allowed circulation of the summary to everyone without exception. But this approach would significantly limit public access to the EIS.

(iv) Consolidation of Environmental Analysis

Section 1502.15 of the draft regulations provides for a consolidated discussion of those elements of an environmental impact statement required by Sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA. This section also requires a discussion of the environmental impacts of the alternatives. Section 1502.16 of the draft regulations provides for a succinct description of the affected environment. The regulations indicate that these analyses will form the analytic and scientific basis for comparing alternatives as required by Section 1502.14.

The chief alternative to this approach is to preserve the status quo. Each element of an EIS required by Section 102(2)(C) would be independently discussed in a separate section. This approach was rejected because four of the elements required by Section 102(2)(C) can be succinctly treated in a consolidated discussion. Moreover, by orienting these analyses to the comparison of alternatives, the draft regulations provide direction for eliminating or reducing the treatment of less important materials and issues.

(v) Standard, More Concise Format

Section 1502.10 of the draft regulations provides a recommended format for EISs, which includes an index, unless there is a compelling reason to organize the material differently. Section 1502.18 limits the materials which could be included in an appendix to those which were prepared in connection with an EIS, as distinguished from those which are incorporated by reference. Taken together, these provisions are designed to reduce bulk in EISs and make the documents easier to use.

These requirements could be left entirely up to the discretion of individual agencies. This approach might forfeit the benefits of a standard, more concise format which would cause at most only modest administrative burdens.

(vi) Tiering and Combining Documents

Section 1502.20 encourages agencies to "tier" their environmental impact statements to eliminate repetitive discussions of the same issues and to

focus on the actual issues ripe for decision at each level of environmental review. This practice is generally followed by most agencies and the draft regulations provide further impetus for its use. The primary alternative to this section would be to require rather than to encourage that tiering be used for every action. However, tiering requires that fine lines be drawn between various stages of agency planning and decisionmaking. Whether a tiered analysis makes sense in a particular case depends on the dimensions of the proposal involved and the procedures by which it will be evaluated. A mandatory requirement for tiering would not account for circumstances where it was unwise, counterproductive or simply impractical.

Section 1506.4 provides that environmental documents prepared under NEPA may be combined with other agency documents to reduce duplication and paperwork. An alternative regulation requiring that this be done in every case, or at least for resource management plans, was rejected as too inflexible. Agency personnel are in a better position to determine when combining documents is practical and serves to reduce duplication and paperwork.

(vii) Incorporation By Reference

Section 1502.21 provides that agencies shall incorporate material into an EIS by reference where it will reduce the length of the document without impeding agency and public review of the action. The incorporated material must be cited and briefly described in the EIS. No material may be incorporated by reference unless it is reasonably available for inspection by those participating in the NEPA process.

An alternative approach would have provided for unlimited incorporation by reference without regard to whether referenced materials were reasonably available for public inspection. The requirement of availability was adopted to ensure that important materials relied upon by the agency were subject to public scrutiny and could be used to evaluate the quality of the agency's analysis.

(viii) Adoption of Environmental Impact Statements

Section 1506.3 of the draft regulations authorizes agencies to adopt a Federal final or draft environmental impact statement or portions thereof provided that the adopted statement shall be treated and recirculated as a draft EIS and provided further that it meets the standards for an adequate draft statement under NEPA.

An alternative approach would have allowed the adoption of environmental assessments as well as EISs. It was determined, however, that Federal agencies should be more directly responsible for the initial hard look at a proposal in an environmental assessment. Under the draft regulations, an assessment normally would not exceed several pages in length. The potential for duplication of effort for assessments would not therefore be great.

A second alternative approach to adoption would have allowed Federal agencies to adopt environmental documents prepared by state or local agencies under other laws and regulations and treat them as draft statements. The standards for preparing such documents at the state level differ substantially from one jurisdiction to the next.

A final alternative would have established criteria for determining an EIS's eligibility for adoption; e.g., does it cover all alternatives to the agency's proposal; has it undergone public review and comment, etc.? As a draft, however, the adopted EIS would be subject to the standards of the NEPA process. The draft's treatment of alternatives and the quality of its analysis would be subjected to review and comment before a final statement was prepared.

3. Reducing Duplication and Delay.

This section of the memorandum discusses provisions in the draft regulations and alternative approaches for reducing duplication and delay.

(i) Cooperating Agencies

Section 1501.6 of the draft regulations provides for the designation of cooperating agencies to assist the lead agency, upon request, in preparing EISs by sharing expertise and assuming responsibility for environmental analyses within their special competence. While the lead agency would have primary responsibility for the EIS, cooperating agencies would be required to become involved at the earliest possible time and play a supporting role throughout the NEPA process. This arrangement is intended to provide a foundation for smooth working relationships among Federal agencies concerned with the proposal, to facilitate cooperation in preparing EISs, to avoid disagreements over the process in the latter stages of Federal decisionmaking, and to foster harmony in Federal programs and policies. A cooperating agency may adopt an EIS of a lead agency when the lead agency has satisfied the comments and suggestions of the cooperating agency. Section 1506.3(b).

Under the draft regulations, the only Federal agencies required to be cooperating agencies are those which have jurisdiction by law over the proposal. Other agencies may decline to assume this status. An alternative approach would have authorized lead agencies to designate agencies with special expertise as cooperating agencies even though they had no jurisdiction by law over the proposal. With this authority, lead agencies could require the cooperation of Federal resource management and pollution control agencies in practically every case. Agencies such as the Environmental Protection Agency, the Fish and Wildlife Service, the United States Geological Survey and others with special expertise in environmental matters could be required to assume a disproportionate share of the responsibility for preparing EISs on proposals that would otherwise be of little concern or interest to them.

A second alternative would require (rather than authorize) the lead agency to designate agencies with jurisdiction by law over the proposal

as cooperating agencies. This alternative compels cooperation from other agencies even if the lead agency felt it was not needed.

A final alternative would simply encourage agencies to cooperate in the early stages of the NEPA process but require them to comment on EISs within their jurisdiction. Something stronger than encouragement was considered necessary to achieve the level of cooperation necessary to reduce duplication and delay in the NEPA process that occurs under existing procedures.

(ii) Resolution of Lead Agency Disputes

Section 1501.5 establishes criteria and procedures for the designation of a lead agency where this matter cannot be resolved informally among the agencies potentially responsible for assuming this role. The criteria are ranked in order of importance. Section 1501.5(c). The Council would be required to resolve lead agency disputes within specified time frames. The draft regulation is designed to expedite resolution of such disputes when they arise.

One variation on the draft regulation would be to establish but not rank criteria for designating lead agencies. This is the approach taken in the existing Guidelines and it allows more discretion in making these determinations. Ranked criteria are more mechanical, easier to apply and promote the resolution of many potential disputes without the need for a formal appeal to the Council. They were included in Section 1501.5 for this reason.

Another alternative would create an intermediate appellate body such as the Environmental Protection Agency or the Chairman of a Federal Regional Council to pass on lead agency disputes in the first instance. This alternative would add a layer to the appellate process and serve to complicate the resolution of what should ordinarily be a relatively simple issue.

(iii) Joint Federal-State Preparation of Environmental Impact Statements

Sections 1501.5(b) and 1506.2 authorize the designation of state agencies as joint lead agencies and the joint preparation of environmental impact statements. More generally, these provisions stress the importance of cooperation in environmental matters at all levels of government.

An alternative approach would require the Council to certify which State environmental review procedures were equivalent to those required by NEPA and authorize Federal agencies to defer to documents prepared under a certified state program. However, NEPA does not authorize such a procedure. Moreover, there would be an immense drain on the Council's resources to evaluate state environmental laws, let alone monitor the quality of their implementation.

A second approach would be to draft model state legislation which would allow state agencies to make use of Federal EISs in their decisionmaking. The Council is also pursuing this approach in cooperation with the Council of State Governments.

A third alternative would mandate joint federal-state preparation of EISs. Federal agencies have no authority to require the cooperation of state agencies in this area.

(iv) Integrating Environmental Analysis With Planning and Decisionmaking

Section 1501.2 requires Federal agencies to identify environmental effects and values in such detail as is required to compare them with economic and technical considerations in agency planning and decisionmaking. This section also requires environmental documents and analyses to be circulated and reviewed at the same time as other planning documents. By requiring the environmental component of an agency's planning to run concurrently with other elements in the process, this section is intended to reduce or eliminate the delay that could result from a two-step or bifurcated analysis. It is also designed to disclose environmental issues in the early stages of a proposal's formulation when, if conflicts occur, they are easier to resolve and to further the implementation of other sections of NEPA, especially Section 102(2)(B).

One variation on this approach would have specifically tied each stage of the NEPA process to precise points in agency decisionmaking to ensure that integration of the two processes actually occurred. This approach was rejected as not providing agencies with sufficient flexibility to meld NEPA with their own procedures in the manner which best serves their decisionmaking purposes. A second variation requiring that environmental documents contain precisely the same amount of detail and be circulated to the same officials as other planning documents was similarly rejected as unduly constraining Federal agency decisionmaking.

(v) Time Limits

Section 1501.8 would establish criteria for setting time limits for the completion of the NEPA process or constituent parts of the process. Upon request from a private applicant, the lead agency would be required to set time limits provided that they are consistent with the purposes of NEPA and other essential considerations of national policy.

The primary alternative would be to fix precise time limits for completing the NEPA process for all agency actions. In view of the diversity of agency decisionmaking procedures, and the variety of factors which bear on the time required to analyze Federal actions, fixed time limits would be unworkable. This was the consensus among members of the public, private organizations and Federal agencies commenting on this suggestion.

(vi) Legislative Environmental Impact Statement

Section 1506.8 of the draft regulations would provide for the preparation of legislative environmental impact statements on proposals for legislation significantly affecting the quality of the human environment. Except in prescribed circumstances, a single statement would be transmitted to the Congress with the legislative proposal and circulated for review and comment to Federal, State and local agencies and the public. No revised EIS would be required.

An alternative approach would require that a final EIS be prepared in every case. Congress may request Federal agencies to provide it with any additional environmental information it needs. Administration proposals will be considered alongside other proposals introduced by members of Congress and the final product, if any, may be substantially different from the proposal transmitted by the Federal agency. Congress may hold hearings on legislative proposals and invite testimony on all aspects of proposed legislation including its environmental impacts. Thus, it seemed overly burdensome to devote resources to the preparation of a final statement in every case.

A second alternative approach would be to require legislative statements on all comments and testimony transmitted to the Congress. As a practical matter, this could substantially interfere with the ability of the Executive Branch to communicate with the Congress. Congress and the Executive Branch are constantly interacting in a fluid policymaking process. Strict procedural requirements are simply not practical in this context. If the Congress determines that environmental analyses are required for its deliberations the Executive Branch would, upon request, ordinarily provide them.

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INSTRUCTION NO.
LI 45-16

LI 45-16
LOGISTICS
Revised 22 January 1974

SUBJECT: Procedures for Implementing Section 102(2)(C) of the National Environmental Policy Act

1. PURPOSE

This Logistics Instruction prescribes procedures for implementing Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190), hereinafter referred to as the Act, with regard to:

a. The design, construction, alteration, operation, and use of public buildings and sites.

b. The lease, purchase, or operation of other facilities or properties.

c. The operation or use of property, equipment, vehicles, and other means of transportation.

2. BACKGROUND

a. Section 102(2)(C) of the Act directs all Federal agencies to identify and develop methods and procedures which will ensure that environmental amenities and values are given appropriate consideration in decisionmaking, along with economic and technical considerations, and to prepare a detailed statement on major Federal actions that significantly affect the quality of the human environment. Executive Order 11514 of 5 March 1970, "Protection and Enhancement of Environmental Quality," implements the purpose and policy of this Act, and "Guidelines," implementing its provisions, have been issued by the Council on Environmental Quality.

b. The Act does not prohibit projects which are determined to have adverse impact but only insists that the environmental statements address each of these impacts and consider possible alternatives.

3. RESPONSIBLE OFFICIALS

a. The Director of Logistics has been designated the Responsible Official, referred to in Section 102(2)(C) of the Act, who shall:

(1) Determine if proposed Agency actions require environmental impact statements.

(2) Ensure the fullest practicable provision of timely public information relative to Agency plans for actions of the type described in paragraph 1 which will impact on the human environment, and he shall obtain views of interested parties before committing final administrative action.

b. The Chief, Real Estate and Construction Division, will assist the Director of Logistics, as required, including the following:

(1) Provide technical competence for assessment studies of proposed projects and actions.

(2) Develop environmental impact statements when they are deemed necessary.

(3) Maintain a list of actions for which environmental statements are being prepared, revising the list as proposed actions are added or dropped.

(4) Report revision of the list to the Council on Environmental Quality quarterly, along with any negative determinations.

c. Independent Operating Officials shall review proposed projects with the Director of Logistics at the earliest possible stage of the proposal.

4. DEFINITION OF TERMS

In the context of this Instruction, the following terms are defined as stated below:

a. Determination - a formal decision by the Director of Logistics that an environmental statement is to be prepared for a proposed action. A negative determination is a decision that preparation of a statement is not merited.

b. Environmental Assessment Study - an organized investigation of a proposed Agency action undertaken to evaluate the significance of the impact that the action may have on the environment.

c. Environmental Assessment - a written analysis describing environmental impacts of Agency actions which is submitted to the Director

of Logistics to assist determination decisions. Information required in the assessment shall parallel the contents required in an environmental impact statement - see paragraph 6.

d. Environmental Impact Statement - a report prepared by the Agency which identifies and analyzes in detail the environmental impact of an Agency action. Statements are to be prepared in draft and final forms. See paragraph 6 for detailed listing of required contents.

5. INTERNAL REVIEW OF PROPOSED AGENCY ACTIONS AND DETERMINATIONS

a. For each proposed action or project of a type listed in paragraph 1, an assessment shall be made as early as possible, before a final determination is made, as to the significance of and the controversiality of the action along with its probable environmental impact.

b. If the preliminary assessment indicates a potential for impact in the categories of pollution (air and water), land use, and use of energy resources, further detailed studies shall be conducted to such a point that will allow a clear determination or negative determination to be made.

c. Projects or actions for which environmental impact statements would normally be made include the following:

(1) Construction of new facilities and the legislative requests for appropriation for new construction.

(2) Acquisition or disposal of real property, by lease, assignment, purchase, or otherwise, the operation of which, by the process involved, adversely affects the environment.

(3) Actions that would force displacement of people or relocation of employees naturally affecting population density. Facility relocations within the Washington metropolitan area shall be examined relative to policies of the National Capital Planning Commission.

(4) Major renovations of existing Agency facilities that alter the basic functions of space in excess of 10,000 gross square feet.

d. Basis for Determination:

(1) "Major Federal Actions" shall be construed to include Agency actions viewed against the cumulative impact of related actions

by other agencies in the project area. If there is potential that the environment may be significantly affected, a statement is to be prepared.

(2) Agency actions likely to be controversial should be covered by an environmental statement in all cases.

6. CONTENT OF ENVIRONMENTAL STATEMENTS

a. The following points are to be covered in draft and final environmental impact statements:

(1) Describe the proposed action and its purpose.

(2) Describe the existing environment to be affected, supplemented with maps, photos, charts, and other graphic media commensurate with the extent of the impact and with amount of information required at the particular level of decisionmaking.

(3) State relationship of proposed action to land use plans, policies, and controls for the affected area.

(4) Describe the probable impact on the environment in both positive and negative aspects. Include primary and secondary consequences which cannot be avoided such as pollution, urban congestion, and threats to environmental goals.

(5) State alternatives to the proposed action and illustrate desirability relative to the recommended course of action proposed. Discuss alternative measures to compensate for losses to wildlife and alternative design approaches that significantly affect consumption of energy or other resources.

(6) Discuss the relationship between local, short-term use and the maintenance and enhancement of long-term productivity of man's environment.

(7) Identify any irreversible and irretrievable commitments of resources should the action be implemented. This requires identification of the extent to which the action would curtail the range of beneficial use of the environment and affect historic features to be preserved.

(8) Indicate other interests and considerations of Federal policy which are thought to offset the proposed action's adverse effects.

(9) Where appropriate, discuss problems and objections raised by other Federal, state, and local agencies and by the public during the review process.

b. Each environmental statement shall be prepared in accordance with the precept of Section 102(2)(C) of the Act that all agencies utilize a systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences in concert with environmental design arts in planning and decisionmaking which may have impact on man's environment. The preparation process involves circulation of statements to other Federal agencies for review and comment, dissemination of information to the public, publishing statements in the Federal Register and the submitting of statements to the Council on Environmental Quality as required by the Council guidelines.

c. Each draft and final statement shall be accompanied by a summary in the format stipulated in Appendix I of the Council on Environmental Quality guidelines dated 1 August 1973.

7. REVIEW OF ENVIRONMENTAL STATEMENTS BY FEDERAL, STATE, AND LOCAL AGENCIES AND BY THE PUBLIC

a. To meet statutory requirements of making environmental statements available to the President, draft statements and final statements, together with the substance of all comments, shall be sent to the Council on Environmental Quality as soon as they are prepared. Transmit statements to the Council in 10 copies. Simultaneously, copies being sent to other agencies for review and comment should be issued.

b. The Council will publish weekly in the Federal Register lists of statements received for public review. The date of publications of such lists shall be the date from which minimum periods for review and advance availability are calculated.

c. Draft environmental statements should be circulated for review to Federal and state agencies with relevant expertise. Refer to Appendices II, III, and IV of the Council on Environmental Quality guidelines dated 1 August 1973 for a listing of such agencies.

d. Draft environmental statements should be submitted in all cases to the Environmental Protection Agency for review and written comment.

e. Public review of environmental impact statements shall be accomplished by making draft and final statements available to the public free of charge or at no more than actual cost of reproduction. The intent to prepare environmental impact statements, the holding of public hearings, and the availability of draft and final statements shall be announced by public notices in local news media serving the geographical area wherein the environmental impact is being assessed. Such public notices shall be timely and contain sufficient information about the action contemplated and its possible impact, so the public can determine whether it should seek access to the impact statement. The notices shall also inform the public how it may gain access to, or obtain, copies of the statement.

f. When requesting review and comment from entities external to the Agency, project managers shall establish an appropriate time period based on the complexity of the statement but not less than 45 days from the date of publication of the statement in the Federal Register. Requests for extensions of time by reviewing bodies up to 15 days should be honored.

g. Final environmental statements shall be published and circulated to all organizations and individuals that made substantive comments on the draft statement. In all cases, copies shall be sent to the Environmental Protection Agency.

8. ADMINISTRATIVE ACTIONS RELATIVE TO REVIEWS OF ENVIRONMENTAL STATEMENTS

a. To the maximum extent possible, execution of actions and projects of the types identified in paragraphs 1 and 5c shall not start sooner than 90 days after a draft statement has been furnished the Council, circulated for comment, and made available to the public.

b. Similarly, execution of proposed actions and projects shall not start sooner than 30 days after a final statement has been made available to the Council, commenting agencies, and the public.

c. The final statement with its appended comments shall accompany the proposal through the existing review processes internal to the Agency prior to execution.

9. SUMMARY OF PROCEDURAL STEPS FOR ENVIRONMENTAL IMPACT REVIEW OF PROPOSED ACTIONS

a. Preliminary Agency review process:

(1) RECD/OL review of proposed action for assessment relative to the Act and the necessity for preparation of an environmental impact statement.

(2) Director of Logistics determination to prepare an environmental impact statement.

(3) Publish the intent to prepare an environmental impact statement, or report to the Council on Environmental Quality a negative determination in case of an action that normally requires an environmental impact statement.

b. Environmental impact statement process:

(1) Prepare draft environmental impact statement.

(2) Issue draft to the Council on Environmental Quality, commenting agencies, and make available to the public. Publish availability of the draft in the Federal Register and by public notices in appropriate local news media.

(3) After 45 days minimum, collect comments and revise the draft, as required.

(4) Issue final text of the environmental statement with comments on the draft to the Council on Environmental Quality and commenting parties. Publish availability of the final environmental impact statement in the Federal Register and by public notices in appropriate local news media.

(5) After 45 days minimum, collect the final comments and conduct an internal Agency review.

c. Final Agency review:

(1) The environmental impact statement, with relevant comments, shall accompany the proposal during review.

(2) Modify the proposal, as required, to satisfy environmental impact statement reviews.

(3) Authorize the project for execution.

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